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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 96

FEDERAL TRADE COMMISSION, PETITIONER

v.

WESTERN MEAT COMPANY, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION OF THE CIRCUIT COURT OF APPEALS

The opinion of the Court below is found in 4 Fed. (2nd) 223. It also appears at pp. 614 to 615 of the printed transcript.

GROUNDS OF JURISDICTION

This was a petition by the Western Meat Company (hereinafter called the Respondent) to the Circuit Court of Appeals for the Ninth Circuit to review an Order of the Federal Trade Commission

(hereinafter called Petitioner) entered under authority of section 5 of an "Act to Create a Federal Trade Commission to define its powers and duties, and for other purposes," commonly known as the "Federal Trade Commission Act" (38 Stat. 719), and of sections 7 and 11 of an "Act to supplement existing laws against unlawful restraint and monopolies, and for other purposes," commonly known as the "Clayton Act" (38 Stat. 730). The jurisdiction of the Court below was invoked under section 5 of the Federal Trade Commission Act as well as under section 11 of the Clayton Act. The Court below on September 3, 1924, entered a decree denying the petition for review and in effect affirming the Order of the Federal Trade Commission (Petitioner here). Such opinion of the Court appears at pages 604 to 610 of the printed transcript. Thereafter, on February 17, 1925, the Court below entered, on rehearing, another decree modifying the second paragraph of the Order of the Federal Trade Commission (Petitioner here). (R. 614, 615.)

Jurisdiction of the Court is invoked under section 5 of the Federal Trade Commission Act (38 Stat. 719), and section 11 of the Clayton Act (38 Stat. 730), and also under section 240 of the Judicial Code as amended by the Act of February 13, 1925 (*Fed. Tr. Com.* v. *Gratz,* 253 U. S. 421).

STATEMENT OF THE CASE

This case is here on Certiorari, for review of a decree of the Circuit Court of Appeals for the Ninth Circuit, entered February 17, 1925, modifying an Order of the Federal Trade Commission (Petitioner here), entered after due hearing, in its proceeding charging Respondent with violation of section 5 of the Federal Trade Commission Act (38 Stat. 719), and of section 7 of the Clayton Act (38 Stat. 730), by the acquisition on December 30, 1916, of the capital stock of the Nevada Packing Company, and the elimination of substantial competition, in interstate commerce, theretofore existing between Respondent and said Nevada Packing Company, in the purchase of cattle, sheep, and hogs, and the sale of meats and meat products arising from their slaughter.

The pertinent parts of the Order are as follows:

> NOW, THEREFORE, IT IS ORDERED, that the respondent, Western Meat Company, shall forthwith cease and desist from violating the provisions of Section 5 of said Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of said Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the

Nevada Packing Company as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization and so as to neither directly or indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation.

IT IS FURTHER ORDERED, that in such divestment no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of respondent or any of its officers, directors, or stockholders or the officers, directors or stockholders of any of respondent's subsidiaries or affiliated companies. (R. 599 to 601.)

The material part of the decree which it is sought to review is as follows:

On consideration whereof, it is now here ordered and adjudged by this Court that the said order of the said Federal Trade Commission be, and the same hereby is, modified as to eliminate therefrom the injunction against the acquisition by the petitioner of the plant and property of the Nevada Packing Company, and in all other respects, the petition to review the order of the said Federal Trade Commission be, and hereby is, denied. (R. 614.)

THE FACTS

There is no controversy over the facts. They have been determined by the Court below, as settled by the Commission. Reference to certain facts, in evidence, but only indirectly reflected in the Findings, though undisputed, illuminates the situation confronting Petitioner when it issued the Order in question. It appears that when acquired by the Western Meat Company December 30, 1916, the stock of the Nevada Packing Company was purchased in the name of one Albert Raymond, an attorney of the Swift interests at San Francisco, and though he immediately endorsed the stock to the Respondent, there was no transfer on the books of the Nevada Packing Company. On November 9th, 1917, so far as such books are concerned, Raymond was still credited with the ownership of all of its stock except five shares. (R. 419.) A report of Respondent to Petitioner December 27, 1918, practically two years after the acquisition of the stock of the Nevada Packing Company, indicated that it was still held in the name of this individual. (R. 465.)

The Respondent owns the whole or a substantial part of the capital stock of numerous corporations engaged in the same, or an allied, business, and the interests in every instance here disclosed appear to be held by some member of the Swift family or by someone directly or indirectly under the control or influence of Respondent, or the Swift interests.

(R. 465, 466.) At the time of the acquisition of the stock of the Nevada Packing Company by Respondent the latter was controlled by Mr. Louis F. Swift of Chicago, president of Swift and Company, meat packers. He, together with other stockholders of Swift and Company, owned approximately 45 per cent of the stock of the Western Meat Company and 35 per cent of its stock, approximately, belonged to officers of Armour and Company, Morris and Company, Cudahy and Company, or some member or members of the Armour, Morris, and Cudahy families, or officers or stockholders of their respective companies. The dominant factors in the meat-packing industry were therefore represented by substantial interests in the Western Meat Company. (R. 447, 462.)

The stock of the Nevada Packing Company was acquired by the Respondent after Armour and Company had been consulted, and had acquiesced in the contemplated purchase (R. 546), although the Nevada Packing Company represented Armour and Company in the sale and distribution of its smoked meats in the territory covered by the Nevada Packing Company, and such business constituted 25 per cent of its yearly aggregate. Louis F. Swift directed the Western Meat Company's business from Chicago, and after purchasing the stock of the Nevada Packing Company instructed the manager of the Western Meat Company so to arrange that the Nevada Packing Company would

be similarly directed. It was thereafter so conducted by Mr. Swift from Chicago through the agency of the Western Meat Company in such way as to subserve the interest of Respondent and therefore of the big packers who owned it. (R. 553, 560.)

At the same time the business of the Nevada Packing Company was conducted under its own name, however, and ostensibly as an independent concern but the Commission found that as a part of the business of the Western Meat Company it began after acquisition of the stock of the Nevada Packing Company to serve, and thereafter it did serve, substantially all of the trade that was formerly served by the Nevada Packing Company before the acquisition of its stock by Respondent. (R. 596, 597.)

There was substantial competition in interstate commerce between the Western Meat Company and the Nevada Packing Company and by means of its acquisition of the stock of the latter by the former this competition was entirely eliminated (R. 566, 570, 571, 597).

This prohibited effect was accomplished, in part, by the maintenance of an appearance of competition between the two companies, although the employees or servants of Respondent were placed in charge of the Nevada Packing Company (R. 168, 169, 188, 273, 556), and certain of the territory usually covered by the former was allotted to the

latter (R. 557, 570), and salesmen of Respondent were warned to refrain from stating to the trade that the Respondent controlled Nevada Packing Company (R. 569).

The evidence reveals no acquisition of the physical assets or properties of the Nevada Packing Company by the Western Meat Company except through the ownership and control of the capital stock acquired as aforesaid, but in oral arguments and briefs Respondent has asserted its right, and, in effect, proclaimed its purpose to purchase the plant and property of the Nevada Packing Company and thereupon cause its dissolution.

There is no evidence that the Respondent acquired the Nevada Packing Company for investment, and the Court below has held that the purpose was entirely different. (R. 609, 10.) Nor is there any evidence whatever that the company so acquired was intended as a subsidiary, or its plant and property as a branch or extension of the Western Meat Company, until possibly after extinction of the competition then existing, when pretense of separate and independent production could be discarded as no longer necessary or useful.

SPECIFICATIONS OF ERROR

First, the Court erred in holding that the Clayton Act confers no other authority on the Federal Trade Commission for enforcement of compliance with section 7 than the authority to command an offending corporation to desist from holding

stock in another corporation in violation of its provisions.

Second, the Court erred in holding that there is no authority conferred by the Federal Trade Commission Act to require the Western Meat Company (Respondent here) to do more than divest itself of its stock in the Nevada Packing Company.

Third, the Court erred in modifying the Order of the Federal Trade Commission so as to eliminate therefrom its prohibition against the acquisition by the Western Meat Company (Respondent here) of the plant and property of the Nevada Packing Company.

Fourth. The questions presented for consideration may be embodied in the one general assignment whether the Federal Trade Commission, in circumstances here disclosed, had the authority under section five of the Federal Trade Commission Act, and section eleven of the Clayton Act, or either of them, to require divestment by Respondent of the stock of the Nevada Packing Company, and its plant and property held, controlled, and operated by Respondent through use of such stock, acquired in violation of section 7 of the Clayton Act.

SUMMARY OF ARGUMENT

Congress passed the Clayton Act to reinforce the antitrust law, and particularly to extinguish, in their incipiency, any and all movements or tendencies to lessen competition, or otherwise restrain

trade or contribute to monopoly. Utterances of those in charge of the measure, before its enactment, and indeed of all practically who advocated its passage in the Congress, manifested keen appreciation of the formidable part played in the suppression of competition and development of monopoly, by the apparent immunity, with which corporations, engaged in commerce, had acquired the control of one or more of their competitors. While this practice was often attended by secrecy, because of difficulties encountered or expected in the attempted purchase, it was the acquisition itself, whether secretly or openly effected, which initiated or tended to initiate the obnoxious movement or tendency. While an acquisition shrouded in secrecy and followed by a false and simulated appearance of continued competition was considered an aggravation of the vicious practice, it was only one aspect of a prevalent economic evil with which Congress sought to deal.

It had developed through a series of actions under the Sherman Law that the only effective means by which illegal combinations could be dissolved, entailed such disintegration of the units or properties of the combinations, as would absolutely prevent their reconcentration, for revival of the forbidden activities. The various decrees of the courts, therefore, specifically directed the disposition to be made of physical properties, as well as stock which had been utilized in furthering the purposes of the illegal combinations. This Court in two epochal

decisions, the Standard Oil and American Tobacco Company cases, gave its approval to the doctrine that the right of property yielded no privilege of using it in disobedience to law and that there inhered in the authority to prevent and restrain violation of the antitrust laws, the authority to require such disposition of property illegally employed, as would prevent recurrence of the violation.

Congress enacted the Clayton law in the light of these conditions, and when in section eleven it authorized the Federal Trade Commission to enforce compliance with section seven of the Act, which forbids a corporation engaged in commerce from acquiring the capital stock of a competitor in commerce, where the effect would probably be the substantially lessening of competition between the two corporations, it must be credited with due knowledge of the conditions and with the purpose to clothe the Commission with the power to issue an effective order.

Such an order must necessarily embrace all that the stock to be divested represents or reflects Otherwise, the substance will be retained by an offender, while merely the shadow is surrendered. It must be assumed that no such vain or useless order was intended by Congress.

Inclusion of the plant and property of the Nevada Packing Company in the Order of Divestment affects no more profoundly or intimately the rights of the respondent than would an order re-

quiring divestment of stock only; and the order here involves neither the exercise of legislative nor judicial power within the meaning of the Constitution.

The facts are undisputed. Respondent engaged in an unlawful enterprise and eliminated substantial competition. This the Court itself emphasizes, so that nothing arises here except the character and scope of the order.

The Commission found, and the Court sustained it, that respondent by its violation of Section seven, and its operation of the plant of the Nevada Packing Company, and elimination of competition, engaged in an unfair method of competition. Thus, there was more than violation of section seven of the Clayton Act, to wit, operation of the plant as an independent competitor, when in fact controlled by respondent, and operated by its servants and employees, and in such way as to destroy preexisting competition between them. The Commission was therefore authorized, apart from any construction of the word "stock" in Section Eleven, to require discontinuance in the ownership and use of the Plant and property of the Nevada Packing Company by respondent, whether under the cease-and-desist clause of section seven of the Clayton Act or Section five of the Federal Trade Commission Act.

There is no semblance or pretense of it, in the record, of any act or purpose by respondent, which

can justify application to this case of the provisions of the third paragraph of Section seven of the Clayton Act. The purpose of respondent in its violation of section seven, as to which there is no issue here, was declared by the Court to be the elimination of the competition theretofore existing between it and Nevada Packing Company. Whatever right Respondent may have had, before December 30th, 1916, to acquire the plant of the Nevada Packing Company was forfeited by its subsequent acquisition of the capital stock of the latter in violation of law, and if allowed to purchase it now, sanction is given to continuance of an unlawful scheme for restraint of trade, in the industry in Nevada and California, by uninterrupted cooperation between Respondent's plant in California, and the Nevada Packing Company's plant in Nevada, which had its basis in, and owes its development, strength, and possibilities to, the acquisition of capital stock of Nevada Packing Company, which the Court denounces as a violation of law.

ARGUMENT

I

Section seven of the Clayton Act and its construction

The first paragraph of Section 7 is as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the

effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

We are concerned in the instant case not only with the restraint of trade in a section or community but with the acquisition by respondent of a competitor in interstate commerce, with the effect that all competition between them was eliminated. The above paragraph specifies three effects, any one of which is sufficient to bring the transaction within its inhibition.

Congress is presumed to have enacted the Clayton law with intelligent appreciation of the views of this Court in regard to the interpretation and enforcement of the Sherman Act. Its prohibition avoids generic terms and includes no words or phrases of doubtful meaning or on which the common law or judicial decision has imposed a definite significance apart from popular use, except perhaps "monopoly."

There is nothing general here. The things to be prevented are particularized. Congress recognized the unquestionable fact that acquisition by corporations in commerce, of competitors also engaged in commerce, had proved a potent method in the restraint of trade and the growth of monopoly. It refused to leave to the Courts the exercise of any judgment concerning the wisdom or reasonableness

of its prohibitions. It declared another policy in addition to that represented by the Sherman Act and itself decided that a corporation in commerce shall not acquire the capital stock of another corporation also in commerce where the effect may be to substantially lessen competition between them. It has rendered unnecessary any resort by the Courts to the standard of reason or any other process of construction than allowance of the ordinary meaning or significance the words in section seven have in the English language, by placing its ban upon the acquisitions in question where they will probably substantially lessen competition between the acquiring and acquired corporations.

Only passing notice need be given to the contention that section seven was intended only to prevent secret combinations, or secret acquisitions of stock in and control of competitors, or to preclude the operations of so-called "Bogus Independents."

There is no process or rule of construction by which the application of section seven of the Clayton Act can be confined merely to secret acquisitions of stock. The language is plain, and unmistakably discloses its real purpose. If it were otherwise so that resort to the debates in Congress might be advisable for enlightenment, there is nowhere to be found in such debates any suggestion whatever that the purpose of the section is so narrow or circumscribed. Certainly this was one of the purposes, but there was also a determination which

would obviously have been pursued further, if constitutional restraints had not arrested it, to prevent corporations engaged in commerce from acquiring the stock of competing corporations. There was no restraint on the power of Congress, however even remote to prevent such acquisition if its probable effect would be to substantially lessen competition in interstate commerce and Congress exercised its power. It would have qualified the comprehensive language employed, if it had aimed only at secret acquisitions or " Bogus Independents " and effort to restrict the application of the Act, by isolated utterances in course of debate, involves processes of construction condemned by Court. It had been the experience that suppression of competition and attainment of monopoly had in many instances in this country been effected openly and notoriously through the holding company and to construe this Act to mean that such results are not obnoxious thereto if produced openly and publicly and that they offend the Act only when brought about through secret acquisitions of stock in competing companies, is to ignore the colossal evil which inspired the agitation resulting finally in its adoption of the Act of Congress.

II

Section eleven and the order it authorizes for enforcement of compliance with section seven of the Clayton Act

The portion of section 11 of the Clayton Act dealing with the order through which the Commission may enforce compliance reads as follows:

> If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order.

It will be noted that it expressly authorizes an order to cease and desist from violation of the Act and to divest of the stock acquired in contravention of its provisions. It further expressly empowers the Commission to prescribe the manner and fix the time in which the order it enters must be carried out. In the case of the *Aluminum Company* v. *Federal Trade Commission* (284 Fed. 401) the order therefore of the Commission was far reaching in its terms and forbade practically every conceivable means by which the Aluminum Com-

pany might evade its effect by indirect acquisition of the stock it was required to surrender. The Aluminum Company sought and was denied rehearing by the United States Circuit Court of Appeals for the Third Circuit, and thereupon its petition for certiorari to the Circuit Court of Appeals was refused by this Court. While, of course, this refusal was no affirmance of the decree of the Circuit Court of Appeals, it certainly implied that the petition presented no such probability of error and suggested no question of sufficient potency as to impress this Court with the desirability of a review. In other words, it appeared to the Circuit Court of Appeals, and presumably to this Court, that authorization of section 11 to require divestment of the stock unlawfully obtained and to provide the manner therefor necessarily implied, if it did not clearly express, authority to so detail the way in which the divestment should be effected, that it would be impossible for the Aluminum Company either to feign a divestment or in any manner become revested contrary to the spirit and purpose of the Act. Here the Court below, while holding as a general proposition that the Commission exceeded its power in ordering a divestment of the plant and property, expressly declined to review that portion of the order and proceeded to modify the portion which the logic as well as law involved should have allowed to conform to the order of divestment.

If the order requiring divestment of the plant and property is sound then the Commission was authorized to safeguard a proper order with appropriate precautions. If in excess of the authority of the Commission to order divestment of the physical property, then there is no conceivable explanation for the refusal of the Court either to modify the order in that particular, except that Respondent from the inception of the transaction here examined, to the intervention of the Commission, ignored in every respect, save its conduct of an ostensible competition, the corporate entity of the Nevada Packing Company. The Court was unwilling to bestow its sanction on the use of capital stock of Nevada Packing Company purchased and held in violation of law, to purchase the property in question, and left undisturbed the order of the Commission to divest. The evidence here revealed clearly to the Court the transparency of the corporate veil which separated Swift and Respondent from the plant and property of the Nevada Packing Company. In *Federal Trade Commission* v. *Menzies Company* (288 Fed. 776, 782), the Court said:

> For some purposes a corporation is distinct from the members who compose it. But that distinction is a fiction of the law and the courts disregard the fiction whenever the fiction is urged to an intent and purpose which is not within its reason and policy and in such a case as this the reason can not be invoked.

So here the reason or policy underlying corporate existence has no application. There is nothing here involved concerning the succession of tenures or rights, nothing in the operations of the Nevada Packing Company directed or conducted by Swift and employees and servants of Swift and Company and the Western Meat Company which seemed to have necessitated a corporate medium except the execution of its purpose to deceive the public into the belief that the Nevada Packing Company was a separate and independent concern. There is therefore nothing here which demands application of the reason or policy upon which corporate creations are predicated. Just as the courts will see through the curtain of mist behind which individuals have sought to shield themselves from corporate delinquencies, so there may be seen and reached by the Commission under section eleven in the circumstances here disclosed the corporate instrumentalities in the hands of individuals whom it is enabled to see behind such curtain.

The corporate entity of the Nevada Packing Company fails to furnish any avenue of escape for Respondent from the Clayton Act. In the case of *The United States* v. *United Shoe Machinery Company* (234 Fed. 127, 141, 143) the Court said:

> Whatever may have been the views of the courts in the early days of corporate existence, when there were but few corporations, and they mostly confined to business of a quasi public nature, at this date courts, and

> especially courts of equity, will look behind the corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice. * * * From the allegations in the complaint it is beyond question that the Maine company is merely a subsidiary of the New Jersey company, and that both are under the absolute control, by reason of its stock ownership, of the New Jersey corporation. The acts of one are the acts of all these corporations; in fact, it may truthfully be said that they are the acts of the United Shoe Machinery Corporation. This being the case, they are properly joined as defendants. (*U. S.* v. *United Shoe Machinery Company*, 234 Fed. 127.)
>
> The decision of the district court was affirmed by the Supreme Court of the United States. (*United Shoe Machinery Company* v. *United States*, 258 U. S. 451).

In *United States* v. *Milwaukee Refrigerator Transit Company* (142 Fed. 247, 255), the Court said:

> A corporation, from one point of view, may be considered an entity without regard to its shareholders, yet the fact remains self-evident that it is not in reality a person or thing distinct from its consistent parts. The word "corporation" is but a collective

> name for the members who compose the association (citing authorities). If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime the law will regard the corporation as an association of persons.

It was this view of the condition presented here that prompted the Commission to include particularly the plant and property in its order for divestment of the stock of the Nevada Packing Company. It is needless to recite any of the frequent utterances of courts to the effect that maintenance of competitive conditions and freedom of trade from restraints constituted an essential purpose of the Sherman antitrust act. Indeed, the first bill introduced bearing the name of Senator Sherman was addressed particularly against restraint of competition.

It has become axiomatic that in the dissolution of illegal combinations, a paramount purpose has impelled Courts so to provide in the decrees as to prevent any reintegration of the units whose cooperation had produced or contributed to the prohibited results. This has been done, in order to restore so far as practicable competitive conditions which preceded the violation of the antitrust act. In the accomplishment of this result, so funda-

mental to the achievement of any substantial benefit, and so manifestly a vital purpose of the Sherman Law, drastic and comprehensive decrees have been entered by the Courts, and sustained, notwithstanding vigorous and persistent appeal to various provisions of the Constitution for protection. As an instance, in the decree in *United States* v. *Standard Oil Company*, it was ordered that certain defendants, their officers, agents, servants, and employees should refrain from causing, under certain conditions, the conveyance of the physical property and business of any of the said parties, to a potentially competitive party to the combination dissolved. It was urged that this requirement unlawfully restricted distributees, after the dissolution, in the sale or disposal of their properties, that it would injure and destroy the value of the same and render their future profitable use practically impossible. This Court held that the decree in the particular attacked, was acceptable and did not deprive the stockholders of the power to make normal and lawful contracts but simply restrained them from any device which might tend to recreate the illegal combination dissolved. In the decree in *United States* v. *American Tobacco Company* (221 U. S. 106, 188) careful provision was made for disintegration of the units composing the illegal combination sought to be dissolved, and in spite of resistance, ending only in this Court, asserting infringement of constitutional rights, the decree regulating the dissolution was approved.

Reference to the following cases will emphasize the wisdom underlying the decrees by which illegal combinations have been combated:

U. S. v. *Union Pacific Railroad Company*, 226 U. S. 96.

U. S. v. *Corn Products Refining Company et al.*, 234 Fed. 964.

U. S. v. *Cement Securities Company et al.*, 268 U. S. 588.

Enlightened by the methods so employed by courts in the dissolution of illegal combinations, Congress could never have intended to omit from an order to enforce compliance the indispensable reference to physical properties and thereby require the Federal Trade Commission to follow one stage always behind the violator of the Act, leaving it in possession of territory reached and denying only that already traversed.

An order would accomplish precisely this result, which required divestment of stock, in a narrow and diminutive sense, leaving respondent in possession of property or advantage derived from its use. Such an order would be superfluous unless practically simultaneous with the acquisition of the stock, and effectual before it could be utilized in any way to obtain property or advantage. This would necessitate celerity unknown to Courts or administrative bodies, which was neither in contemplation by Congress, as evidenced by other provisions of the Act, nor practicable under our system of government.

It would seem that Congress after prolonged consideration of the Act, in committees and extensive debates, in which conditions of every description in the industries of the country were exhibited and exhaustively discussed would not ignore a means of evasion, which would occur to the most casual mind, and which would be manifestly invoked to thwart its purpose whenever enforcement of its Act should be undertaken.

The spirit and reason of the Act and consideration of its context, supplemented by reference to effects and consequences that must necessarily follow any other construction of Section 11 than that exemplified by the order under consideration, impels us to the conclusion that such order is valid and should be sustained.

Assuredly no order could contribute less to the restoration of competitive conditions destroyed by Respondent than one requiring surrender of stock worth no more than the paper on which it is printed, as declared by Circuit Judge Ross in his dissenting opinion. (R. 614.)

III

Respondent should not be allowed to take advantage of its violation of law

The wisdom of great age is embodied in the maxim which has come down to us that no man can take advantage of his own wrong, and must be recognized and applied here.

In the case of *Little* v. *Fleischman et al.* (98 S. E. 455, 458) the Supreme Court of North Carolina used the following language:

> That no man should be permitted to take advantage of his own wrong is not only a principle of the common law, but a maxim of general jurisprudence which is well recognized and established. It is based on elementary principles and is applied both in courts of law and of equity, the reasonableness and necessity of the rule being manifest. It is of such general application that it admits of illustration from every branch of legal procedure, and is one of the basic principles which govern this case. Broom, Legal Maxims (6 Am. Ed.), p. 212; Star, p. 275, and cases. It applies even though the actual wrong was unconsciously committed, which we have no doubt was the case here.

In *Continental Wall Paper Co.* v. *Voight & Sons Company*, 212 U. S. 227, 262, this Court said:

> Stated shortly, the present case is this: The plaintiff comes into court admitting that it is an illegal combination whose operations restrain and monopolize commerce and trade among the states and asks a judgment that will give effect, as far as it goes, to agreements that constituted that combination, and by means of which the combination proposed to accomplish forbidden ends. We hold that such a judgment can not be granted without departing from the statutory rule, long established in the jurispru-

> dence of both this country and England, that a court will not lend its aid, in any way, to a party seeking to realize the fruits of an agreement that appears to be tainted with illegality, although the result of applying that rule may sometimes be to shield one who has got something for which as between man and man he ought, perhaps, to pay, but for which he is unwilling to pay.

Here respondent, while not admitting, is found by the Commission and by the Court to have acquired certain property in violation of law by a transaction as much condemned by the Clayton Act as the illegal combination in the case last noted was violative of the Sherman Law, but the Court below would actually give effect to the illegal transaction while this Court refused to give effect to an agreement no more illegal.

The same view seems to have been held by the Court in *Thatcher Manufacturing Company* v. *Federal Trade Commission* (5 F. 2nd, 615, 621).

IV

The acts and practices of the Respondent as found by the Commission and confirmed by the Court constitute unfair methods of competition in interstate commerce and of themselves justify the order under consideration

In *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, 453, this Court said:

> The Sherman Act is not involved here except in so far as it shows a declaration of

> public policy to be considered in determining what are unfair methods of competition which the Federal Trade Commission is empowered to condemn and suppress. The case now before us was begun under the Federal Trade Commission Act and Clayton Act, both of which were intended to supplement previous antitrust legislation.

The public policy has been proclaimed by Congress as certainly in the Clayton Act as in the Sherman Act. A method of competition therefore which contravenes the policy announced in the Clayton Act, just as surely as if it violated the policy embodied in the Sherman Act, is an unfair method of competition. There is no rational ground for the conclusion that conduct which violates the public policy expressed in the Sherman Act may be an unfair method of competition, but conduct repugnant to the policy declared by the Clayton Act can not be.

> *National Harness Manufacturers Association* v. *Federal Trade Commission*, 268 Fed. 705.
>
> *Wholesale Grocers Association of El Paso*, v. *Federal Trade Commission*, 277 Fed. 657.

The effort of Respondent while operating the plant of the Nevada Packing Company to create the impression that it was an independent competitor brings this case clearly within the characterization by Judge Buffington, of the Circuit Court of Appeals for the Third Circuit, in *United States*, v.

United States Steel Corporation, when (223 Fed. 55–61), among other pertinent references, he said:

> If it was seeking to deceive purchasers by false appearance of competition when in fact it owned or controlled such seeming competition, then it was prejudicing, not only that portion of the public which desired to purchase steel, but the public interest generally by unduly obstructing the course of trade and thereby preventing the steel business from moving in its natural and normal channel.

The acts which this Court last mentioned declared would prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade are precisely the acts which in its course of deception the Respondent perpetrated upon the public. The Respondent was seeking to deceive purchasers by a false appearance of competition when it owned and controlled such seeming competition, and this fact is established by evidence which it has neither repudiated nor explained. (R. pp. 562–569.)

It thus appears that though the Respondent, Western Meat Company, controlled Nevada Packing Company, it was ostensibly conducted as a separate, distinct, and independent competitor.

The offense of the Respondent therefore consisted not only in the acquisition of the capital stock of the Nevada Packing Company, where the probable effect was to substantially lessen compe-

tition between the two companies, but in using such stock so acquired to suppress and finally eliminate competition and restrain trade in the area covered by former activities of the two companies. There is authority under section five to compel Respondent to cease and desist from operating or using the plant and property of the Nevada Packing Company in connection with the Western Meat Company or otherwise than as a competitor. There could be no restoration of competitive conditions, no return to the status quo, without which Respondent must profit from its wrongdoing, without surrender of the property secured by the stock as well as the stock. There can be no relief afforded the public whose rights are infringed so long as Respondent may remain intrenched in its position, securely fortified by the plant and property its defiance of the act has enabled it to seize and which it will retain if the modification of the order is affirmed.

V

The Order to divest the stock of the Nevada Packing Company, including the plant and property of the Company, involves no exercise of legislative power

Reference to a few decisions only of this Court negatives any suspicion of legislation by the Commission in the order here.

In the case of *Interstate Commerce Commission* v. *Goodrich Company* (224 U. S. 194, 214), the Court said:

The Congress may not delegate its purely legislative power to a commission, but having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and investigations of the facts with a view of making orders in a particular matter within the rules laid down by Congress.

Union Bridge Company v. *United States*, 204, U. S. 365.

Louisville & Nashville Railroad Co. v. *Garret*, 231 U. S. 298; *Pennsylvania Railroad Co.* v. *International Coal Co.* 230 U. S. 184.

National Pole Company v. *Chicago and North Western Railroad Company*, 211 Fed. 65.

United States v. *Grimaud*, 220 U. S. 506.

In these cases this Court clearly upholds delegation of authority just as comprehensive and vital in its contact with property and property rights as the authority exercised by the Commission in the Order involved here.

VI

The order involves no exercise of the judicial power of the United States within the meaning of the Constitution

In the case of *Murray et al.* v. *Hoboken Land and Improvement Company*, 18 Howard, 280, 284, the Court dealing with the subject of judicial power used the following language:

> To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.

In the Clayton Act, and especially in section eleven thereof Congress has imposed on the Federal Trade Commission a duty in respect to enforcement of certain sections of the law, which involves the exercise of judicial power in an enlarged sense but it is not judicial power within the meaning of the Constitution. The judicial power would have been capable of acting on them, because they are susceptible of judicial determination. Congress, however, intent upon a plain, prompt, and efficient reinforcement as well as prophylactic treatment of the antitrust laws, enacted the Clayton Law. Instead of bringing the matters entrusted to the Commission within the cognizance of the Courts of the United States, in the first instance, it manifested an evident determination not to do so.

This Court has settled the line of demarkation between functions and duties requiring exercise of judgment even where controverted questions of fact and law arise, and substantial interests are involved, and such as entail the exercise of judicial power within the meaning of the Constitution. It early established the power of Congress to exercise or confer on special tribunals created by it the authority to exercise powers which involve judgment and discretion and are in a sense judicial but not in the sense of the Constitution.

> *Hayburn's Case*, 2 Dal. 409; *U. S.* v. *Ferreira*, 13 How. 40; *Gordon* v. *United States*, 117 U. S. 696.

Order to divest stock would surely be as much an exercise of the forbidden judicial power as an order to divest property, and the inclusion of the latter in the order here in no way tends to transform it into an exercise of judicial power of the United States.

There has been no claim in this case, that the Commission exceeded its authority in ordering divestment of the stock, though such order would be just as much exposed to the charge of exercising judicial power which Congress could not take away from the Courts, as one including the plant and property. It is true, that in some of the cases just submitted, this Court held there was no exercise of judicial power by the inferior court, or tribunal, because there was no independent and final authority conferred on this Court to review and thereafter

enforce its judgments. Their consideration, however, is suggested, to demonstrate that all the powers, or processes, or measures, expressed in judicial decrees, are by no means, ipso facto, judiciai powers. It may here be observed, however, that while the Clayton Act vests in the Circuit Court of Appeals, the power to review the orders of the Commission, jurisdiction is not conferred to set aside an order to divest stock or to cease and desist from violation of the certain sections of the Clayton Act, if the Findings on which the order is based, are themselves supported by testimony. Determination of the weight of evidence is entrusted to the Commission, and the only exercise of judgment with which the Court is invested in this connection is the duty of ascertaining whether there is any evidence, irrespective of its weight, to support the Findings.

CONCLUSION

The judgment of the Circuit Court of Appeals modifying the order of the Federal Trade Commission should be reversed, and the order of the petitioner affirmed.

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○

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. 96

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

WESTERN MEAT COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT.

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IN THE

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vs.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT.

THE QUESTION BEFORE THE COURT.

Although the granting of the Commission's petition for certiorari has the effect of bringing here for review the entire proceedings before the Circuit Court of Appeals for the Ninth Circuit, respondent feels that in view of the fact that it filed no application in this Court and, therefore, impliedly indicated its willingness to comply with the order of the Commission as modified by said Circuit Court of Appeals, that argument should be now limited to the question:

> Has the Federal Trade Commission, in a proceeding instituted under Section 5 of the Federal Trade Commission Act and under Sections 7 and 11 of the Clayton Act, the power and authority to

> issue an order requiring a corporation which holds the capital stock of another corporation to divest itself not only of the stock held, but also of the plant and properties of said other corporation?

or, applying the question to the situation presented here:

> Did the Federal Trade Commission have the power and authority, under either of said Acts, to issue an order which, in effect, would prevent respondent from divesting itself of the stock of the Nevada Packing Company by dissolving said company and taking over its property and assets in the course of such dissolution?

The original order of the Commission would prevent respondent from thus dissolving the Nevada Packing Company, taking over its property and assets, and thereafter operating the Nevada plant as a branch of respondent and in the name of respondent. The order of the Commission as modified by the judgment of the Circuit Court of Appeals for the Ninth Circuit will permit respondent to divest itself of the stock in that manner.

Respondent will endeavor, in the course of this brief, to show that the order of the Commission, as thus modified by the Circuit Court of Appeals and requiring only a divestment of the stock held, is the only order that the Federal Trade Commission has any power or authority to make under the provisions of either the Federal Trade Commission Act of the Clayton Act. Before entering upon a discussion of that question, respondent will briefly refer to the history of the case since the inception of the proceedings by the Federal Trade Commission:

History of the Case.

On or about December 30, 1916, respondent, Western Meat Company, a corporation, acquired all of the capital stock of Nevada Packing Company.

On or about November 24, 1919, and after respondent had held said stock of the Nevada Packing Company for nearly three years, the Federal Trade Commission, claiming that as a result of the acquisition of said stock respondent had entirely eliminated the competition which had theretofore existed between it and said Nevada Packing Company and had restrained commerce in the purchase and sale of meat and meat products in the States of Nevada and California, filed its complaint charging a violation of the provisions of Section 5 of the Federal Trade Commission Act and of Section 7 of the Clayton Act and contemporaneously therewith called upon respondent *to show cause why an order should not be entered by the Federal Trade Commission requiring respondent "to cease and desist" from the violations complained of and "to divest itself of the stock or shares capital"* unlawfully held in said Nevada Packing Company. (R. 8.)

The allegations of the complaint were put in issue by the answer filed by respondent. (R. 13.) The cause proceeded to a hearing without the Commission indicating that it had any intention or desire to affect the plant and properties of Nevada Packing Company or to enter any order other than the one expressly authorized in a proper case by the provisions of the Federal Trade Commission Act and the Clayton Act, viz.: an order requiring respondent to cease and desist from the violations complained of and to divest itself of the stock held.

After an extended hearing, the Commission, on or about February 2, 1923, entered an order (R. 599) not only requiring respondent *"to cease and desist"* from violating the provisions of Section 5 of the Federal Trade Commission Act and of Section 7 of the Clayton Act,

and *to divest itself of the stock held*, but, in addition thereto, requiring respondent

> * * * to include in such divestment *the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof* as a complete, going packing plant and organization, and so as to neither directly nor indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation,"

and even still further requiring

> "* * * that in such divestment no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee or agent of, or any one otherwise directly or indirectly connected with or under the control or influence of respondent or any of its officers, directors or stockholders, or of officers, directors or stockholders of any of respondent's subsidiary or affiliated companies." (R. 601.)

On or about July 27, 1923, respondent filed a petition for review (R. 1) in the Circuit Court of Appeals for the Ninth Circuit, claiming, in said petition, that the evidence did not warrant the Commission in holding that respondent had violated either Section 5 of the Federal Trade Commission Act or Section 7 of the Clayton Act, and furthermore, that even though the Commission's findings to that effect were justified by the evidence, it had no power or authority to enter any order other than one requiring respondent "*to cease and desist*" from violating said provisions of the Federal Trade Commission and Clayton Acts, and "*to divest itself of the stock held*" by it in the Nevada Packing Company. The petition for review was denied (1 F. (2nd) 95), the court in its opinion not even discussing the question as to whether the Commission's order was broader and more comprehensive than that authorized by Congress. (R. 604.)

Thereupon, respondent filed a petition for rehearing,

in which respondent, without waving any of the grounds originally urged by it for the setting aside of the Commission's order, particularly emphasized that even though the Commission was justified in finding against respondent's contentions upon the facts, nevertheless respondent's objections to the form and scope of the order for divestment were well taken. The court granted a rehearing solely for the purpose of hearing further argument upon that question.

After reargument devoted entirely to a consideration of the scope and extent of the congressional grant of power to the Federad Trade Commission, the Court entered judgment (4 F. (2nd) 223) modifying the order of the Federal Trade Commission *so as to eliminate therefrom the injunction against the acquisition by respondent of the plant and property of the Nevada Packing Company.*

In the briefs upon reargument, and likewise orally before the Court, respondent contended, among other things, that its right or the right of its stockholders, officers, etc., to purchase the physical assets and properties of the Nevada Packing Company had never been involved in the proceeding, and that the Commission was entirely without jurisdiction to predetermine that question upon the record before it; that, nevertheless, the Commission had made an order which, if enforced, would prevent respondent from taking over said physical assets and properties; that said order, unless modified, would prevent respondent from dissolving the Nevada Packing Company as a corporation and from acquiring the assets of the latter company as a result of such dissolution; and still further that the Commission's order, if it remained unchanged, would prevent respondent from selling or transferring said stock or property to one who

holds only one share of its capital stock, even though said holder of said stock had no other connection with respondent.

As a result of respondent thus indicating some of the particulars in which the Commission had exceeded its jurisdiction, the reargument rather naturally resolved itself into a discussion of the question: Did the Commission have the power or authority to make an order which, in effect, would enjoin the Western Meat Company from acquiring the plant and property of the Nevada Packing Company—and which would prevent the Western Meat Company, as the holder of all of the stock of the Nevada Packing Company, from causing the dissolution of the latter corporation and from acquiring its plant and property in the course of such dissolution? With this explanation, it can be readily appreciated why the judgment of the Circuit Court of Appeals for the Ninth Circuit was specifically to the effect that the injunction against the acquisition by respondent of the plant and property of the Nevada Packing Company should be eliminated from the order entered by the Commission. (R. 612.)

In its opinion modifying the order of the Federal Trade Commission (R. 613), the Circuit Court of Appeals held that the Clayton Act

> "* * * *gives the Federal Trade Commission no authority other than the authority to command the offending corporation to desist from holding stock in another corporation in violation of Section 7*"....

and that there is no authority

> "* * * *given by the Federal Trade Commission Act to require the petitioner here to do more than to divest itself of its stock in the Nevada Packing Company.*"

The judgment of the Circuit Court of Appeals modifying the order of the Federal Trade Commission must be

read and considered in the light of its written opinion—and when so read and considered it is not susceptible of the construction which petitioner would place upon it, to wit, that the Circuit Court of Appeals concluded that the order, in so far as it required a divestment of the physical properties of Nevada Packing Company, should not be disturbed. On the contrary, the Court unequivocally found that the Commission exceeded its authority in requiring respondent to divest itself of the plant and properties of Nevada Packing Company when it said:

> "*We think the order in the instant case goes beyond the authority conferred on the Federal Trade Commission in requiring the petitioner to divest itself of the Nevada Packing Company's plant and the property necessary to the conduct and operation thereof* * * *." (R. 613.)

The Circumstances Under Which Respondent Purchased the Capital Stock of the Nevada Packing Company.

Prior to December 30, 1916, the Nevada Packing Company, a corporation, operated a small meat packing plant at Reno, Nevada, and in connection therewith purchased live stock and sold meat and meat products. It operated on a comparatively small capital, approximately $353,000.00, and confined its operations almost entirely within the State of Nevada. About twenty-five per cent of the total volume of its entire business consisted in the sale of smoked meats for Armour and Company on a commission basis.

The entire capital stock of the Nevada Packing Company was owned by one U. M. Slater and two other residents of Nevada, who entrusted the management and control of the business to him. He had been advised by his physician that he must get out of business because of

failing health. For years Mr. Slater and the other stockholders of the Nevada Packing Company endeavored to find a purchaser for their stock. As early as 1913 (about three years before the sale to respondent was made), Mr. Slater approached Mr. Washburn, of the Western Meat Company, upon the subject but without result. Thereafter he proposed a sale to others engaged in the same general business, including Armour and Company, which concern had a representative at the Nevada plant for months taking an inventory and making a general survey of the business. Finally, Armour and Company declined to buy, and the matter was again taken up with respondent. Mr. Slater was willing to sell and actually did sell to respondent the stock of the Nevada Packing Company owned and controlled by him and his associates at a price arrived at by an appraisal of the physical assets of the company.

The Nevada Packing Company was really a one-man concern, an instrumentality through which Mr. Slater transacted the meat packing business. It must be evident that any one desiring or intending to eliminate the Nevada Packing Company from the field of competition, would, of course, have endeavored to restrain the future activities of Mr. Slater, too, yet it appears that when the stock owned and controlled by him was purchased by respondent it exacted no promise from him not to engage in the same business in the State of Nevada or any other place—and very shortly after the sale was consummated, Mr. Slater purchased an interest in the Grayson-Owens Packing Company, of Oakland, California, and thereafter solicited business in the Nevada territory. (R. 58.) It appears that Mr. Slater also conducted a wholesale meat business in Oakland, California, under the name of U. M. Slater, Inc.—and that Mr.

Slater was interested in this business prior to the time he sold the Nevada Packing Company to respondent, and that he retained his interest therein until his death in 1919. (R. 132, 133.)

The record discloses that there was no secret about the acquisition by respondent of the capital stock of the Nevada Packing Company. Immediately upon the consummation of the original transaction, the particulars thereof became known to the general public and to the competitors and customers of both respondent and the Nevada Packing Company. The press reports of the transaction gave it wide publicity. (See photostat copies of newspaper accounts, R. 588 to 590.)

Immediately after respondent acquired the stock of the Nevada Packing Company, the later's plant was enlarged and rebuilt at an expense of $200,000.00 to $250,000.00. (R. 139.)

Summary of the Argument.

(I) A brief consideration of the pertinent provisions of the Federal Trade Commission Act and the Clayton Act will disclose that the Commission was without power or authority in this proceeding to issue any order other than one requiring respondent to cease and desist from the violations complained of, and to divest itself of the stock held.

(a) Section 5 of the Federal Trade Commission Act empowers the Commission, in a proper case, to order the person, firm or corporation engaged in the unfair method of competition to cease and desist from using the unfair method complained of. "To cease and desist" means to "discontinue" and applies entirely to the future.

(b) Section 11 of the Clayton Act authorizes the Commission, in a proper case, to require a corporation which acquires and holds the capital stock of a

competitor corporation to "cease and desist" from violating the provisions of Section 7 of said Act, and to "divest itself of the stock held." The order prescribed by Congress relates to the intercorporate stockholding and nothing else.

(c) The Commission, an administrative body, has no power or authority other than that expressly conferred by the statutes.

(d) Proceedings under the Federal Trade Commission Act and the Clayton Act are preventative, not punitive. The Commisison is without authority to inflict a penalty upon respondent for having acquired the stock of the Nevada Packing Company.

(II) The legislative purpose behind the Clayton Act has heretofore been recognized by the Commission and its members, and they have expressly disclaimed power or authority to require the purchasing corporation to do anything other than to cease and desist from further violating the provisions of said Act and to divest itself of the stock held.

(a) The Commission and its members have in various ways (particularly referred to) recognized that Section 7 of the Clayton Act was and is directed at the "holding company" and the "bogus competitor." They have recognized that the order prescribed by Congress in Section 11 of the Clayton Act was and is intended to prevent these judicially declared objectionable trade practices.

(b) The members of the Commission, realizing that they are without power to issue an order affecting property other than stock, appealed to Congress that the Clayton Act should be strengthened so as to make unlawful the acquisition by one corporation of the "property" of a competitor corporation.

(c) This additional power was not granted by Congress and yet the Commission is endeavoring to exercise it by attempting to impose upon respondent an order which affects property other than stock.

(III) The order in the Aluminum case, pointed to by the Commission as a precedent for its order in the in-

stant case, did not require a divestment of anything other than the stock held.

In that case the order to divest only required a divestment of stock. The form and scope of the order was not in issue before the Circuit Court of Appeals or before this Court, where certiorari was applied for and denied.

(IV) There is no analogy between the powers of Circuit Courts under the Sherman Act and the powers of the Federal Trade Commission under the Clayton Act.

(a) Proceedings based upon a violation of the Sherman Act are directly instituted in the Circuit Courts, and the proceedings are termed by the Act itself "Proceedings in Equity to Prevent and Restrain such violation." The order which the court is authorized to make is not prescribed by Congress, and the court, sitting in equity, is empowered to exercise its judicial discretion and enter a decree in keeping with the case presented.

In the Federal Trade Commission Act and the Clayton Act, Congress not only directed its legislation against certain trade practices, but handed to the Commission a definite, self-sufficient order, designed to accomplish the purposes intended. For a violation of Section 7 of the Clayton Act, Congress directed a divestment of stock only.

(b) The Commission is an administrative and not a judicial body. Despite its protestations to the contrary, the Commission, by seeking to impose upon respondent an order requiring it to divest itself not only of the stock, but also of the plant and properties of the Nevada Packing Company, is attempting to function as a court.

(V) If Sections 7 and 11 of the Clayton Act are construed and applied according to their plain meaning, no constitutional question arises.

(a) The authority of Congress to enact the Federal Trade Commission Act and the Clayton Act is derivable from the Constitutional provision empowering it to regulate commerce.

(b) This constitutional provision authorizes

Congress to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to protect its growth and insure its safety.

(c) In the Standard Oil case, this court enumerated certain objectionable trade practices which had been variously employed to restrain trade and attain monopoly; among these were the "holding company" and "the bogus independent."

(d) In the Clayton Act, Congress legislated against practically all of the trade practices condemned by this court in the Standard Oil case. Section 7 and that part of Section 11 applicable thereto are specifically directed against the "holding company" and the "bogus independent."

(e) Construed as an inhibition against the "holding company" and the "bogus independent," Sections 7 and 11 of the Clayton Act are, in our opinion, constitutional, because they aim at correcting trade practices judicially condemned by this court. Construed as the Commission would have them construed, as prohibiting a corporation, *solely because it is a corporation*, from taking over the plant and property of a competitor corporation, through the medium of a stock transaction, leaving an individual or a copartnership free to acquire said plant and property through that medium without violating any law, said Sections 7 and 11, in our opinion, would be unconstitutional.

ARGUMENT.

I.

A BRIEF CONSIDERATION OF THE PERTINENT PROVISIONS OF THE FEDERAL TRADE COMMISSION ACT AND THE CLAYTON ACT WILL DISCLOSE THAT THE COMMISSION WAS WITHOUT POWER OR AUTHORITY IN THIS PROCEEDING TO ISSUE ANY ORDER OTHER THAN ONE REQUIRING RESPONDENT TO CEASE AND DESIST FROM THE VIOLATIONS COMPLAINED OF AND TO DIVEST ITSELF OF THE STOCK HELD.

The Commission bases its complaint upon the alleged violation of Section 5 of the Federal Trade Commission Act (approved September 26, 1914; C. 311, 38 Stat. 717) and Section 7 of the Clayton Act (approved October 15, 1914; 38 Stat. 730 to 733, inclusive).

Federal Trade Commission Act.

In Section 5 of the Federal Trade Commission Act, Congress empowers and directs the Commission "to *prevent* persons, partnerships or corporations from using unfair methods of competition."

Said Section 5, after thus generally empowering the Commission, provides that the Commission, whenever it shall have reason to believe that any person, partnership or corporation has been or is using any unfair method of competition, shall issue and serve its complaint, *stating* its charges and containing notice of the time and place fixed for a hearing thereon. Then said section provides:

> "The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order

> should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint."

And, with reference to the powers of the Commission in so far as the making of an order in a proper case is concerned, said Section 5 provides that the Commission

> "* * * shall issue and cause to be served on such person, partnership, or corporation, an order requiring such person, partnership, or corporation to *cease and desist* from *using* such method of competition." (Italics ours.)

Assuming for all present purposes that respondent did violate the provisions of Section 7 of the Clayton Act and that *ipso facto* respondent did thereby violate Section 5 of the Federal Trade Commission Act, the Commission was only authorized by Congress to enter an order requiring respondent to "cease and desist" from using the unfair method of competition resulting therefrom.

In *Federal Trade Commission* v. *Beechnut Packing Co.*, 257 U. S. 441, the Supreme Court, referring to the Federal Trade Commission Act, said (at p. 453):

> "That Act declares unlawful 'unfair methods of competition', and gives the Commission authority, after hearing, *to make orders to compel the discontinuance of such methods.*" (Italics ours.)

Manifestly, the Commission, under Section 5 of the Federal Trade Commission Act, may be a properly framed order "*to cease and desist*" compel a discontinuance of the unfair method of competition complained of.

In the instant case, as we have stated, the method of competition complained of (if that charged in the complaint is sufficiently stated) is that resulting from the

acquisition by respondent of the capital stock of the Nevada Packing Company. *Had respondent purchased the physical properties of the Nevada Packing Company instead of its capital stock, and operated the Reno plant as a branch house, it would not have violated Section 7 of the Clayton Act—and respondent could not have been then charged with indulging in an unfair method of competition* in thus acquiring and using such physical properties, for that procedure has not been condemned by the public policy declared in either the Federal Trade Commission Act or the Clayton Act.

It follows, therefore, that if respondent were to divest itself of its stock holdings in the Nevada Packing Company, in compliance with an order properly made under the Clayton Act, it would *ipso facto* comply with any lawful order made by the Commission under Section 5 of the Federal Trade Commission Act.

The Clayton Act.

The prohibitions of the Clayton Act, as the following references thereto will show, are directed against specific practices referred to therein.

Section 2 of said Act declares it unlawful for any person engaged in commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities under certain conditions where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

Section 3 thereof makes it unlawful for any person engaged in commerce to lease or sell merchandise or fix a price charged therefor on condition that the lessee or purchaser shall not use or deal in the merchandise of any competitior of the vendor, or lessor, where the

effect may be to substantially lessen competition or tend to create a monopoly.

The text of that part of Section 7 with which we are particularly concerned in this proceeding reads as follows:

> "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

And Section 8 provides that no person shall be an officer or employee of more than one of certain banks, banking associations, or trust companies, or a director or employee of two or more of certain other competing corporations, under certain circumstances and conditions specifically mentioned in said section.

Section 11 of the Clayton Act authorizes the Federal Trade Commission to "enforce compliance with Sections 2, 3, 7 and 8" thereof. Said Section 11 specifically provides that the authority therein conferred upon the Commission is "*to be exercised as follows*":

> "* * * whenever the Commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of said Sections 2, 3, 7 and 8."

the Commission shall issue and serve its complaint, stating its charges and containing a notice of the time and place fixed for the hearing. Said Section 11 further provides:

> "The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the

> Commission or board requiring such person to *cease and desist* from the violation of the law so charged in the complaint." (Italics ours.)

And then follows the provision that if, upon such hearing, the Commission shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall state its findings,

> "* * * *and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of Section 7 and 8 of this Act, if any there be, in the manner and within the time fixed by said order.*" (Italics ours.)

This defines *all* of the authority to be exercised by the Commission in any proceeding based upon a violation of the Clayton Act. Its order to the purchasing corporation must be to "*cease and desist*" from violating the provisions of that section, the Commission tending to the mere detail, of course, of reciting the violation complained of.

"*To cease and desist*," as used in Section 11 of the Clayton Act, has exactly the same meaning as "to cease and desist" where employed in Section 5 of the Federal Trade Commission Act—and that meaning is "to discontinue" just as Mr. Justice Day expressed it in *Federal Trade Commission* v. *Beechnut Packing Company*, 257 U. S. 441-453. The Commission, therefore, in a proper proceeding based upon a violation of Section 7 of the Clayton Act has the power and authority to order the purchasing corporation "to discontinue violating said Section 7 by holding stock in its competitor corporation," and of course the Commission has the additional power, as the Act provides, to order that the corporation complained against "*divest itself of the stock held*," but

it has no authority beyond that, for Congress in the opening paragraph of Section 11 of the Clayton Act provided that the powers of the Commission should be exercised in that manner.

Manifestly, the Commission had no power or authority under the terms of either the Federal Trade Commission Act or the Clayton Act to make any order other than one requiring respondent to cease and desist from violating the provisions of said Acts and to divest itself of the stock held.

That the sections of the Federal Trade Commission and Clayton Acts to which we have referred give to the Commission all the authority which it has in proceedings thereunder, we refer to:

> *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463, 475,

wherein this court said:

> "The powers of the Commission are limited by the statutes."

and to

> *Wilder Manufacturing Co.* v. *Corn Products Refining Co.*, 236 U. S. 165, 174,

in which Mr. Chief Justice White, speaking for this court, said:

> "Where a statute creates a new offense and denounces the penalty, or gives a new right, and declares the remedy, the punishment or the remedy can be only that which the statute prescribes" (citing numerous cases).

II.

THE LEGISLATIVE PURPOSE BEHIND THE CLAYTON ACT HAS HERETOFORE BEEN RECOGNIZED BY THE COMMISSION AND ITS MEMBERS, AND THEY HAVE EXPRESSLY DISCLAIMED POWER OR AUTHORITY TO REQUIRE THE PURCHASING CORPORATION TO DO ANYTHING OTHER THAN TO CEASE AND DESIST FROM FURTHER VIOLATING THE PROVISIONS OF SAID ACT AND TO DIVEST ITSELF OF THE STOCK HELD.

The congressional debates preceding the adoption of the Clayton Act are persuasive that Section 7 of said Act is intended to meet a situation wherein two or more ostensible competitors are joined together by intercorporate holdings and yet are pretending to function with normal competitive activity. That Congress was directing its efforts toward the elimination of the so-called "bogus independent" and "the holding company" from the field of commerce is quite evident from the remarks of Senator Cummings, who took a most active part in the preliminary discussions. Referring to the preventative purpose behind what is now Section 7 of the Clayton Act, the Senator aptly said:

> "It is just that case that we want, as I think, to prohibit, so that if a consolidation can lawfully occur under the anti-trust laws, it shall be an open, public consolidation, so that everybody can know what is transpiring. * * * I do not believe that is the proper construction of the anti-trust law; otherwise there could be no sale of business. I think there can be, *but wherever the law permits the sale of the business then it ought to be open and public, and a corporation ought not to acquire control of a business simply through the purchase of the stock of a company which continues under its own name, and, so far as the public knows, is independent in its management. That is what I think this section is intended in the main to prevent.*" (Italics ours.) (Congressional Record, August 27, 1914, pp. 14315, 6.)

The Federal Trade Commission has heretofore acted under no delusion concerning the purpose of Section 7 of the Clayton Act and its authority thereunder. It has disclaimed power to make any order other than one requiring the purchasing corporation to divest itself of the stock held.

In its Bulletin No. 1 of January 31, 1916, the Commission gives as Conference Ruling No. 8 the following:

> "*The right of one manufacturer engaged in interstate commerce to buy out a competitor, and jurisdiction of the commission in such matters.*—On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business: *Held, That the only jurisdiction of the commission in respect of such transaction is to enforce the provision of Section 7 of the Clayton Act prohibiting the acquisition by any corporation engaged, in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged, where the tendency of such acquisition may be to substantially lessen competition between such two corporations, or to restrain interstate commerce or to create a monopoly;* and also possibly to enforce Section 5 of the Federal Trade Commission Act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition. *Held, also,* That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton Act or the Federal Trade Commission Act." (Italics ours.) (Findings, Orders and Conference Rulings of the Federal Trade Commission, Vol. I, p. 541.)

The same view was expressed by Commissioner Van Fleet of the Federal Trade Commission in connection with the proposed merger of the Midvale Steel & Ordinance Co., the Republic Iron & Steel Co., and the Inland Steel Co. Upon this subject the Commissioner there said:

> "It will be seen that this act is much more far

reaching than the Sherman Act in cases coming within its provisions for the reason that it prohibits substantial lessening of competition between the corporations themselves, and if its language were broad enough to include every combination however effected, it would prohibit all combinations of competing businesses.

In such case and under such construction the Sherman Act would become obsolete. There would be no need ever to resort to it because always the combination, though it did not contravene its provisions, would come within the provisions of the Clayton Act. *So the Clayton Act specifically limits its operation to a case where the combination is effected by the acquisition of shares or share capital,* thus under the well-known maxim of statutory construction '*expressio unius,*' etc., excluding its application to any other state of facts. * * * * * * *There was a well-defined purpose in the Clayton Act, namely, to prevent secret combinations by the acquisition of stock* and a reference to the debate over the bill clearly demonstrated this and clearly shows it did not have in mind the prohibition of the merging of competing companies under all circumstances." (Italics ours.)

Whether well defined or not, such undoubtedly was the purpose of the Clayton Act. Fully appreciating that Congressional purpose and the sufficiency of the order prescribed in Section 11 to give it effect, the Federal Trade Commission asked Congress to amend the Clayton Act so as to give the Commission jurisdiction over physical assets. Members of the Federal Trade Commission appeared before the Committee on the Judiciary of the House of Representatives (66th Congress) on September 8 and 9, 1919. On page 21 of Serial 5 of the hearings, Mr. Victor Murdock, a member of the Commission, expressed himself as follows:

"Now, in section 7, Clayton Act, Mr. Chairman, Congress provided against a corporation's acquisition of stock in competing companies. I think at the time Congress passed that act it was a wise

> piece of legislation. But section 7 of the Clayton Act certainly needs strengthening now, because section 7 does not include the word 'property.' * * * But the Government cannot win where there is an acquisition of property instead of an acquisition of stock as the law stands to-day."

Congress has never given to the Commission the power Mr. Murdock asked for. Notwithstanding steadfast Congressional refusal to grant such power, we find the Commission, first before the Circuit Court of Appeals for the Ninth Circuit, and now before this court, strenuously contending that it has it.

When the Commission incorporated in its order in the instant case, the paragraph requiring respondent to so divest itself of the stock of the Nevada Packing Company,

> "* * * as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct an operation thereof as a complete, going packing plant and organization," etc.,

the Commission adroitly attempted to supply "the strengthening" of Section 7 which the Commission had sought to obtain from Congress and which Congress had refused.

The Commission itself in the case of

> *Aluminum Company of America* v. *Federal Trade Commission,* 261 U. S. 616,

disclaimed authority to make any order under Section 11 of the Clayton Act other than one requiring the corporation which has acquired the stock to divest itself of the stock. In its brief, filed in this court on February 19, 1923, and signed by James B. Beck, Solicitor General, W. H. Fuller, Chief Counsel, and Edward L. Smith, attorney, it is said:

> "There is nothing in the Clayton Act which permits the Commission, when it finds a violation of

> Section 7 of the Clayton Act, to make any order other than one requiring the corporation which has illegally acquired stock to divest itself of such stock; and it would seem that a Circuit Court of Appeals has no right under the power of modification given to it by the act, to enter any order excepting one which requires a divestiture of the stock illegally acquired."

It cannot be disputed that respondent had the right to purchase the property and assets of the Nevada Packing Company in December, 1916, the very time that it acquired the capital stock of said company. Had respondent then acquired the physical assets it would, of course, have eliminated all competition existing between it and the Nevada Packing Company, but the only effect on competition would have been merely such restraints and effects as are necessarily incident to the union of two competing businesses—the particular industry still remaining freely competitive and the line of commerce suffering no restraint as the effect of such union—and in so doing, respondent would have violated no law.

The Commission's order, before the same was modified by the Circuit Court of Appeals for the Ninth Circuit, would prevent respondent from taking over the assets of the Nevada Packing Company at this time. It would prevent respondent from disolving the Nevada Packing Company as a corporation and from acquiring the assets of the latter company as a result of such dissolution. If the Nevada Packing Company were so dissolved, respondent would thereby divest itself of the stock held by it in said company. It would thereby end all semblance of a secret combination between it and the Nevada Packing Company, if there was any such semblance—and it would thereby make impossible any deception of the public by a false appearance of competition, because there would, in fact, be no competition at

all. What had been the Nevada Packing Company's plant and property would then be openly operated and publicly known as respondent's plant and property. In a word, the same situation would exist as that which would have existed had respondent acquired the physical assets of the Nevada Packing Company in the year 1916.

The Commission, by its order in this case, has really attempted to visit a penalty upon respondent for having acquired the capital stock, instead of the physical properties, of the Nevada Packing Company. That the Commission is without power or authority to impose any penalty whatsoever must be conceded, for proceedings under the Federal Trade Commission Act and the Clayton Act are not punitive in character. Mr. Justice Brandeis, in his dissenting opinion in

> *Federal Trade Commission* v. *Gratz*, 253 U. S. 421,

(wherein the majority opinion annulled an order of the Federal Trade Commission) expressed his views concerning the legislative purpose behind the Federal Trade Commission Act. We here quote the pertinent part of his opinion: (p. 432.)

> "The proceeding is not punitive. The complaint is not made with a view to subjecting the respondents to any form of punishment. It is not remedial. The complaint is not filed with a view to affording compensation for any injury alleged to have resulted from the matter charged, but with a view to protecting individuals from any such injury in the future. The proceeding is strictly a preventive measure taken in the interest of the general public * * * (434).
>
> "In undertaking to regulate competition through the Trade Commission, Congress (besides resorting to administrative as distinguished from judicial machinery) departed in two important respects from the methods and measures theretofore applied in dealing with trusts and restraints of trade.

"(1) Instead of attempting to inflict punishment for having done prohibited acts, *instead* of enjoining the continuance of prohibited combinations and *compelling disintegration of those formed in violation of law*, the act undertook to preserve competition through supervisory action of the Commission. The potency of accomplished facts had already been demonstrated. The task of the Commission was to protect competitive business from *further* inroads by monopoly. * * * Its action was to be prophylactic. Its purpose in respect to restraints of trade was prevention of diseased business conditions, not cure." (Italics ours.)

Exactly the same legislative purpose was and is behind the Clayton Act. That the Federal Trade Commission entirely ignored that purpose in the making of the order which it is attempting to justify before this court is too apparent for argument.

The effect of orders of the Federal Trade Commission under the Clayton Act is entirely in the future. The Commission has not been given *carte blanche* authority to restore the status *quo ante* or to revive the competitive conditions which, in its opinion, existed before the acquisition of the stock. Had Congress intended to confer any such power upon the Commission, it would have expressly done so.

As further authority for our contention that an order of the Federal Trade Commission, based upon a violation of Section 7 of the Clayton Act, must have its effect entirely in the future—and must be directed toward preventing the continuation of the business condition complained of, rather than to cure the same—we respectfully refer to the case of

Chamber of Commerce v. *Federal Trade Commission*, 13 F. (2nd) 673,

wherein the Circuit Court of Appeals for the Eighth Circuit said (at page 685):

> "As the orders of the Commission are purely remedial and preventative, the effect thereof is entirely in the future. Therefore, the jurisdiction of the Commission should in this respect be measured as of the time of the order rather than as of the filing of the complaint or as of the hearing thereon."

The foregoing authorities, in our opinion, completely answer the Commission's contention that in formulating its order in this case it had the power and authority to include therein provisions which, in its opinion, would restore competitive conditions and accomplish a return to the *status* which existed prior to December 30, 1916, the date upon which respondent acquired the capital stock of the Nevada Packing Company. By a properly framed order, requiring respondent to cease and desist from violating the provisions of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, and further requiring respondent to divest itself of the stock held by it in the Nevada Packing Company, and a bona fide compliance with that order upon the part of respondent, the Commission will have accomplished all that Congress ever intended by the Federal Trade Commission and Clayton Acts that it should accomplish, viz., *it will protect the public in the future from any alleged injury likely to result from the condition complained of.*

III.

THE ORDER IN THE ALUMINUM CASE POINTED TO BY THE COMMISSION AS A PRECEDENT FOR ITS ORDER IN THE INSTANT CASE DID NOT REQUIRE A DIVESTMENT OF ANYTHING OTHER THAN THE STOCK HELD.

Petitioner at page 17 of its brief refers to its order in

> *Aluminum Company* v. *Federal Trade Commission*, 284 F. 401,

as authority for its sweeping and destructive order in this case. In this connection, petitioner states

> "In the case of the *Aluminum Company* v. *Federal Trade Commission* (284 F. 401), the order therefor of the Commission was far reaching in its terms and forbade practically every conceivable means by which the Aluminum Company might evade its effect by *indirect acquisition of the* stock it was required to surrender."

The record in the Aluminum case, and, indeed the above quoted reference to the order therein, show that the Commission made no attempt whatever to order a divestment of anything other than the stock held by the Aluminum Company of America in Aluminum Rolling Mills Company. Furthermore, the form and scope of the order which the Federal Trade Commission may properly make under Section 11 of the Clayton Act was not in issue either before the Circuit Court of Appeals for the Third Circuit or before this court in the proceedings for *certiorari*.

IV.

THERE IS NO ANALOGY BETWEEN THE POWERS OF CIRCUIT COURTS UNDER THE SHERMAN ACT AND THE POWERS OF THE FEDERAL TRADE COMMISSION UNDER THE CLAYTON ACT.

After thus referring to its order in the Aluminum case as a precedent for its order in the case at bar, the Commission made a further endeavor to justify its order in this case by reference to the decrees made by our Federal Courts in the Standard Oil, American Tobacco, Union Pacific, Corn Products and Cement Securities cases, every one of which was a proceeding based upon a violation of the Sherman Anti-trust Act. Heretofore, in argument before the Circuit Court of Appeals, the Commission, when referring to the decrees rendered in the above mentioned cases, frankly admitted that the analogy "may not be perfect." But, now, in this honorable court of final appeal, the Commission claims that in a proceeding based upon a violation of the Clayton Act, it has exactly the same power and authority concerning the character and extent of its order as have Circuit Courts under the Sherman Act.

Nevertheless, the analogy still remains "imperfect." Proceedings based upon a violation of the Sherman Act are directly instituted in the Circuit Courts of the United States, and the proceedings are termed by the act itself: "Proceedings in Equity to Prevent and Restrain such Violations." The Sherman Act does not define or limit the character of order to be made by the court, but leaves the court, sitting in equity, to exercise its judicial discretion and enter a decree in keeping with the case presented to it. The decree, of course, to be valid must be such as would reasonably prevent and re-

strain the violation complained of. The Commission is not vested with any such authority under either the Clayton Act or the Federal Trade Commission Act. By the terms of those acts, the Commission is given certain definite authority, with express instructions as to the kind and character of the order to be entered. And under each act, the form of order prescribed by Congress is formulated to exactly meet and correct the specific trade practices which the act condemns. Plainly, then, there is no analogy whatever between the powers of Circuit Courts in proceedings based upon violations of the Sherman Act and the powers of the Federal Trade Commission in proceedings under the Clayton Act.

The Federal Trade Commission is not a court; it exercises administrative not judicial functions:

National Harness, etc., Assn. v. *Federal Trade Commission*, 268 Fed. 705.

Chamber of Commerce v. *Federal Trade Commission*, 280 Fed. 45.

Eastman Kodak Co. v. *Federal Trade Commission*, 7 F. (2nd) 994.

Despite its protestations to the contrary, the Commission has attempted to exercise judicial, as well as administrative, powers in this proceeding.

V.

IF SECTIONS 7 AND 11 OF THE CLAYTON ACT ARE CONSTRUED AND APPLIED ACCORDING TO THEIR PLAIN MEANING, NO CONSTITUTIONAL QUESTION ARISES.

The only provision of the constitution which authorizes Congress to declare unlawful the acquisition and ownership of capital stock of a private corporation or to justify a Federal statute, like the Clayton Act, ordering

that under certain circumstances the owner of such property "divest itself of the stock held" is that contained in Article 1, Section 8, reading:

> "* * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Concerning the power of Congress to regulate commerce, Mr. Chief Justice Taft in

> *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456,

said (p. 478):

> "To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to protect its growth and insure its safety" (citing cases).

Now in

> *U. S.* v. *Standard Oil Company*, 221 U. S. 1 (41-43),

Mr. Chief Justice White, in the course of his very exhaustive opinion, enumerated certain objectionable practices which, experience had demonstrated, had been variously employed to restrain trade, attain monopoly, and generally to obstruct the channels of interstate commerce. Among the trade practices there enumerated and condemned by the learned Chief Justice were the "holding Company" and "the operation of bogus independent companies."

In the Clayton Act, an anti-trust law supplemental to the Sherman Act, Congress legislated against practically all of the trade practices condemned by this court in the Standard Oil case. Section 7 of the Act is specifically directed against the "holding company" and "the bogus independent"; and in Section 11 of the Act, Congress hands to the Federal Trade Commission, an administra-

tive body, a definite and self-sufficient form of order to be issued to a corporation violating the intercorporate stockholding provisions of Section 7, viz.: an order to cease and desist from violating the provisions of Section 7 and to divest itself of the stock held.

Construed as an inhibition against the "bogus independent" and the "holding company," Section 7 of the Clayton Act, in our opinion, is constitutional, because it aims at correcting a trade practice condemned by the courts as a means or device variously employed by those seeking to restrain trade and obtain monopoly. As thus construed, there is nothing harsh, or unjust, or unreasonable, or arbitrary in the selection and classification. In our judgment, however, said Section 7 of the Clayton Act would be positively arbitrary and discriminatory, and therefore, unconstitutional if interpreted, as the Commission would have it interpreted, for the reason that it would constitute a regulation of the affairs of corporations, as distinguished from other "persons" without any justification for the arbitrary selection.

Mallinckrodt Chemical Works v. *Missouri*, 238 U. S. 41.

If the Commission's interpretation be given effect, the result must necessarily be that because of the provisions of Section 7 of the Clayton Act, "A," a corporation, and solely because it is such, is prohibited from acquiring the plant of "B," also a corporation through the medium of a stockholding transaction—leaving "C," who happens to be an individual or a co-partnership, entirely free to take over the plant of "B" through such medium without violating any law whatever. That such prohibition, as we view the law, would be arbitrary and discriminatory and make the act unconstitutional.

Corporations cannot be subjected, merely because they are corporations, to onerous requirements having no reasonable support in that fact.

Kentucky Finance Corp. v. *Paramount Auto Exchange*, 262 U. S. 544.

Southern Bell Telephone & Telegraph Co. v. *Town of Calhoun*, 287 Fed. 381.

Society of Sisters of the Holy Name v. *Pierce*, 296 Fed. 928. (Later affirmed by this Court in 268 U. S. 510.

But, after all, Congress in the Clayton Act has made no attempt to legislate against anything other than the judicially condemned intercorporate stockholding. Nothing is said in Section 7 of the Act as to any property other than stock—and in Section 11, the order prescribed by Congress is directed at nothing but stock. The specification of "stock" is in no uncertain terms and excludes, of course, everything else. It, therefore, appears that no constitutional question is involved in this case. Sections 7 and 11 of the Clayton Act are not, in our opinion, susceptible of any other construction than that which the Circuit Court of Appeals for the Ninth Circuit, placed upon them in and by its judgment modifying the order of the Commission in so far as that order would militate against the acquisition by respondent of the plant and physical properties of the Nevada Packing Company.

But, if this statute were susceptible of two constructions, by one of which grave and doubtful constitutional questions arise, and by the other of which such questions are avoided, the disposition of this Court would be, we take it, to adopt the latter.

Commodities Claim Cases, 213 U. S. 366.

Conclusion.

It is respectfully submitted that the order of the Circuit Court of Appeals for the Ninth Circuit modifying the order of the Commission in this case should be affirmed.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted] 213

THATCHER MANUFACTURING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 4, 1926

CERTIORARI GRANTED OCTOBER 26, 1926

(31,444)

(31,444)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 721

THATCHER MANUFACTURING COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1924

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

APPLICATION FOR THE ENFORCEMENT OF AN ORDER OF THE FEDERAL TRADE COMMISSION

On this day comes the Federal Trade Commission by W. H. Fuller and A. R. Brindley, its attorneys, and presents to the court an application for the enforcement of an order issued by the Federal Trade Commission on December 31, 1923, in a proceeding instituted by it against Thatcher Manufacturing Company, entitled "Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738," and a certified transcript of the entire record in said proceeding, including all the testimony taken and the report and order of the Federal Trade Commission.

It is ordered that such application and transcript be filed herein and that notice of the filing thereof and a copy of such application and transcript be served upon Thatcher Manufacturing Company as the law directs.

March 31, 1924.

Victor B. Woolley, U. S. Circuit Judge.

Endorsements: 3167. Order Allowing Filing of Application and Record and Directing Service Received & Filed Mar. 31, 1924. Saunders Lewis, Jr., Clerk.

RESOLUTION.

(Dated March 1, 1921.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of March, A. D. 1921:

Present: Huston Thompson, chairman, Nelson B. Gaskill, Jno. Garland Pollard, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Complaint in the matter of the alleged violation of section 7 of an act of Congress approved October 15, 1914, and section 5 of an act of Congress approved September 26, 1914.

Whereas the Federal Trade Commission has reason to believe that Thatcher Manufacturing Company has violated and is violating the provisions of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, and it appearing to the commission that a proceeding by it in respect thereof would be to the interest of the public, therefore be it

Resolved, That the Federal Trade Commission issue and serve upon the said Thatcher Manufacturing Company its complaint, stating its charges in that respect in substantially the form hereunto annexed; and be it

Further resolved, That notice be given to the said Thatcher Manufacturing Company, as required by law, that the charges of said complaint will be heard by the commission in the city of Washington, D. C., on the 28th day of April, A. D. 1921, at 10.30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached.

Adopted by the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

COMPLAINT.

(Dated March 1, 1921.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of March, A. D. 1921.

Present: Huston Thompson, chairman; Nelson B. Gaskill, Jno. Garland Pollard, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION

vs.

THATCHER MANUFACTURING COMPANY.

Docket No. 738. Complaint in the matter of the alleged violation of section 7 of an act of Congress approved October 15, 1914, and section 5 of an act of Congress approved September 26, 1914.

I.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Thatcher Manufacturing Company, hereinafter referred to as the respondent, has, during the three years last past, violated, and is violating, the provisions of section 7 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," issues this complaint stating its charges in this respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Thatcher Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office, factory, and place of business located at the city of Elmira, in said State, and with other factories located at the cities of Kane, State of Pennsylvania, and Streator, State of Illinois; and is now and ever since February, 1905, has been engaged in the business of manufacturing and selling milk bottles throughout the various States of the United States, the Territories thereof, and the District of Columbia in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH TWO. That in the conduct of its business respondent purchases and enters into contracts for the purchase of the necessary raw materials used in producing its product, in different States of the United States, causing the same to be moved and transported through other States of the United States, in and to its factories located in the cities of Elmira, State of New York; Kane, State of Pennsylvania; and Streator, State of Illinois; where they are made into the finished product and then sold, moved, and transported to customers located throughout the various States of the United States, the Territories thereof and the District of Columbia, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such milk bottles between and among the various States of the United States, the Territories thereof, and the District of Columbia, and more especially from different States of the United States through other States in and to the cities of Elmira, State of New York; Kane, State of Pennsylvania; and Streator, State of Illinois, and therefrom through, in and to other States of the United States, to the Territories thereof and the District of Columbia.

PARAGRAPH THREE. That at the time of its organization in 1905 the respondent acquired from the Owens Bottle Machine Company, an Ohio corporation, of Toledo, Ohio, the exclusive right to manu-

facture and sell in the United States, milk bottles produced by an entirely automatic bottle-making machine, which was then the first and the only such machine, and respondent, under such exclusive manufacturing right, gradually increased its business and output until in the year 1918 it was making and selling approximately one-half of all the milk bottles used in the United States; that after the invention and introduction of said Owens Bottle Machine the Hartford-Fairmont Company, a corporation, put upon the market another bottle-making machine owned by it, which was in efficiency and economy the equal to or the superior of that owned by said Owens Bottle Machine Company, and thereafter said Hartford-Fairmont Company granted the exclusive and nontransferable right and license to manufacture and sell in the United States milk bottles produced by its machine, to the Travis Glass Company, a West Virginia corporation, of Clarksburg, West Virginia, the Essex Glass Company, an Ohio corporation, of Mount Vernon, Ohio, the Lockport Glass Company, a New Jersey corporation, of Lockport, New York, and the J. T. & A. Hamilton Company, a Pennsylvania corporation, of Pittsburgh, Pennsylvania, and under such exclusive manufacturing rights and licenses said licensees manufactured, sold, and transported milk bottles in commerce similar to that of the respondent as aforesaid, and in competition with each other and said respondent, Thatcher Manufacturing Company; that the nonexclusive right and license to produce and sell condiment bottles was similarly granted by said Hartford-Fairmont Company to the Woodbury Glass Company, a corporation, and this licensee engaged in manufacturing, selling, and transporting such bottles between and among the various States of the United States, in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FOUR. That the respondent, Thatcher Manufacturing Company, a corporation in commerce as aforesaid, in August, 1919, acquired by purchase the whole of the stock and share capital of the above-mentioned Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and the milk bottle business and the Hartford-Fairmont machine and license of said J. T. & A. Hamilton Company, and thereafter, to wit, June, 1920, said respondent acquired the Hartford-Fairmont licenses of said Travis, Essex, Lockport, and Woodbury Glass Companies, and caused all of the real and personal property of such corporations to be transferred to it by bills of sale and deeds, and since such transfers it has caused said Lockport Glass Company to dissolve and retire from business, and like dissolutions of said Travis and Essex Glass Companies are now being perfected, and since such acquisitions of stock, licenses, and physical assets as aforesaid, the respondent has and does now manufacture, sell, and control from 50 to 90% of all the milk bottles sold and used throughout the United States; that said respondent, ever since the time of such acquisitions, has owned and still does own the whole of the stock and share capital and Hartford-Fairmont licenses and physical assets of said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and the business and Hartford-Fairmont licenses of said J. T. & A. Hamilton Company, and the effect of the acquisition of said stock and share capital and the use of the same either by voting or granting of proxies or otherwise has been and

is to eliminate competition between and among the respondent, Thatcher Manufacturing Company, and said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and to restrain such commerce as aforesaid throughout the States of the United States, the Territories thereof, and the District of Columbia, and to tend to create a monopoly of such line of commerce; and respondent did not so purchase such stock and share capital solely for investment and said Travis, Essex, Lockport, and Woodbury Glass Companies are not now and never were subsidiary corporations formed for the actual carrying on of the immediate lawful business of said Thatcher Manufacturing Company or the natural and legitimate branches or extensions thereof.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Thatcher Manufacturing Company, hereinafter referred to as respondent, has violated and is violating the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. As grounds for said complaint said commission relies upon the matters and things set out in paragraphs one, two, three, and four of count I of this complaint to the same extent as though the allegations thereof were set out at length herein, and said paragraphs one, two, three, and four are incorporated herein by reference and adopted as a part of the allegations of this count and are hereby charged as fully and completely as though the several paragraphs were repeated verbatim herein.

Therefore, notice is hereby given you, Thatcher Manufacturing Company, that the charges of this complaint will be heard by the Federal Trade Commission in the city of Washington, D. C., on the 28th day of April, 1921, at 10.30 o'clock in the forenoon of said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring the respondent, Thatcher Manufacturing Company, to divest itself of the stock unlawfully held in the aforesaid Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and to cease and desist from the violations of law charged in this complaint.

You will further take notice that within thirty (30) days after the service of this complaint you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice before the commission.

In witness whereof the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and its official seal to be affixed hereto at the city of Washington, D. C., on this 1st day of March, A. D. 1921.

By the commission:

[SEAL.] (Signed) J. P. YODER,
Secretary.

ANSWER.

(Filed April 4, 1921.)

Before Federal Trade Commission.

Docket No. 738.

Federal Trade Commission

vs.

Thatcher Manufacturing Co.

I.

ANSWER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Now comes the Thatcher Manufacturing Company, respondent in the above entitled cause, and makes answer to the complaint therein that the Federal Trade Commission has no jurisdiction in respect of the acts and transactions alleged in said complaint, and that said complaint fails to set forth facts constituting a violation of section 7 of the act of Congress approved October 15, 1914, known as the "Clayton Act," or of any law, the enforcement of which lies within the power of said commission.

Without waiving the defense above set forth, or any of the other invalidities or defects in said complaint, and reserving the benefits of all exceptions that can be taken thereto, and further denying that the said complaint and proceedings based thereon are to the interest of the public, the respondent makes further answer to the said complaint, as follows:

1. The respondent admits the allegations of paragraph 1 of said complaint.

2. The respondent admits the allegations of paragraph 2 of said complaint.

3. Replying to paragraph 3 of said complaint, respondent admits that several years ago it acquired from the Owens Bottle Machine Company the exclusive right to use in the United States for producing milk bottles an entirely automatic bottle-making machine, which machine was at the time of such acquisition the first and only type of fully automatic machine in use in the United States for making milk bottles. The respondent denies that it acquired from said Owens Company any exclusive right to sell milk bottles. The respondent alleges that said machine was covered and fully protected by patents against use by others and that any monopoly factor connected with the use thereof was a patent monopoly, lawfully existing by virtue of the patent law of the United States.

4. Replying further to paragraph 3 the respondent denies that under such exclusive manufacturing right it was, in the year 1918, making or selling approximately one-half of all the milk bottles used in the United States. The respondent has no certain knowledge as to the total production of such bottles in the United States

in 1918, but believes that at that time it was making about forty per cent of that total.

5. Replying further to said paragraph 3 the respondent admits that after the introduction of the said Owens bottle machine the Hartford-Fairmont Company put on the market a machine for making milk bottles, different from the said Owens machine and that said machines of the Hartford-Fairmont Company, operated as a unit, were in efficiency and economy equal or superior to that owned by the said Owens Company.

6. Replying further to paragraph 3, the respondent admits that after the introduction of said Hartford-Fairmont machine the Hartford-Fairmont Company granted to four certain concerns, to wit: Travis Glass Company; Essex Glass Company; Lockport Glass Company; J. T. & A. Hamilton Company (at that time a partnership and later organized as a corporation) licensees to use the said milk-bottle-making machinery of the Hartford-Fairmont Company in the United States to produce milk bottles. The respondent denies that such licenses conveyed or attempted to convey any right to sell bottles so made; and further denies that such licenses to the said four companies were exclusive or nontransferable, except to the extent that under certain conditions set forth in said licenses, and only under such conditions, such use of said machinery for such purpose was made exclusive in said four companies and the right to transfer said licenses was restricted.

7. Replying further to paragraph 3 the respondent admits that under such licenses from the Hartford-Fairmont Company said four licensees manufactured milk bottles and the respondent further admits that the said licensees sold and transported such bottles in commerce, such commerce being generally similar to that of the respondent and that from time to time the sale by the said licensees were in competition with each other and with the respondent. The respondent denies the allegation of paragraph 3, if such allegation there be, that such sale and transportation was under said licenses, or in any way conditioned upon said licenses.

8. Replying further to paragraph 3 the despondent admits that nonexclusive licenses were granted to the Woodbury Glass Company by said Hartford-Fairmont Company to use the Hartford-Fairmont feeder machine for producing condiment bottles. It denies that said licenses for condiment bottles granted or conveyed in any way the right to sell such bottles. The respondent admits that the Woodbury Glass Company manufactured and sold, and transported such bottles in such commerce in competition with other parties. The respondent alleges that at no time did the Woodbury Glass Company produce milk bottles, and at no time did its business compete with the milk-bottle business of the respondent.

9. The respondent says that it has not sufficient information upon which to form a belief as to the allegations of paragraph 4 of said complaint to the effect that the respondent has and does now manufacture, sell, and control from 50 to 90% of all the milk bottles sold and used throughout the United States and therefore denies said allegation. The respondent alleges that all the machinery operated by it in making milk bottles was and is used by the respondent under licenses from the said Owens Company or from the Hartford-Fairmont Company, or both, and that all of said machinery was and is

fully covered and protected by United States patents against use by others, and that any monopoly or factor of monopoly, if any there be, arising in connection with the use of such machinery was and is based upon and derived from such patent rights, and is lawfully held, and exercised by virtue of lawful patent grants from the United States.

10. The respondent denies all the other allegations of paragraph 4 of said complaint, except that respondent admits that it has acquired all the real and personal property of the said Travis, Essex, Lockport, and Woodbury Glass Companies and that the Travis, Essex, and Lockport Glass Companies were dissolved prior to the date of said complaint. The respondent further admits that it acquired by direct cash purchase the Hartford-Fairmont milk-bottle machine and the license therefor owned by the J. T. & A. Hamilton Company. And the respondent alleges, in further reply to the allegations of said complaint, and of paragraph 4 thereof in particular, that it has, in paragraphs 12 to 22, inclusive, of this reply, set forth completely all the facts relevant to the issues in this case bearing on the relations of the respondent to and its interest in the stock or share capital of the said Travis, Essex, Lockport, Hamilton, and Woodbury Companies.

11. The respondent says that it is impossible, merely by way of direct reply to said complainant, to set forth plainly and sufficiently, for the fair and full information of the honorable commission, the character of the transactions which constitute the issue. The respondent respectfully desires for that purpose to present in this its reply a clear statement of the essential facts. The respondent understands from said complaint and believes that the underlying question involved under the alleged violation of section 7 of the Clayton Act, is the relation of the respondent to the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company. The respondent, therefore, makes the following statement as to such relation, which statement covers all the essential facts relevant thereto.

12. (a) In the case of the Hamilton Company there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and machinery.

(b) The Woodbury Glass Company did not make any milk bottles, but only condiment bottles. It was not and never has been in any way competitor of the respondent.

(c) The remaining companies, Essex, Travis, and Lockport Glass Companies, are still to be considered. They will be referred to hereafter as the "three companies." The facts set forth below are all the relevant facts relating to the connection of the stocks of these companies with the respondent.

13. In addition to the three companies, there appeared as essential parties to the transactions the Sterling Glass Company, the Thatcher Manufacturing Company (the respondent), Messrs. F. E. Baldwin, Edward D. Libbey, and William Ford, and later Mr. H. C. Mandeville and Mr. Frank L. Collins. Mr. Baldwin was president and one of the largest stockholders in the respondent company. But at no time during the transactions set forth below did

he hold a majority of the voting stock of the respondent company. Messrs. Libbey and Ford represented outside interests.

14. The entire transaction in question began in August, 1919, and was based on the fact that there were then outstanding and available certain options on the stocks of the three companies. There was also the expectation (never realized) that certain other interests would be brought in. It was the intention from the beginning that the respondent should acquire the physical assets of the three companies, together with their license rights. Considerable negotiations were pending, necessitating probable delay. The option time was comparatively short. The Sterling Glass Company was therefore formed on August 25, 1919, to serve merely as a temporary means through which, if necessary, the desired rights could be acquired quickly. It issued $500,000 par value of its stock. Of this a little less than one-half was taken by the respondent at par and the other half by Mr. Libbey.

15. On August 28th and 29th, 1919, Messrs. Libbey, Baldwin, and Ford discounted at the Guaranty Trust Company their separate individual notes for a total of $1,610,000. The sum thus borrowed, together with the $500,000 subscribed to the Sterling Company, was on that day used to purchase all the stocks of the three companies, in accordance with the said outstanding options. These stock certificates were endorsed in blank and delivered to the Guaranty Trust Company as collateral to secure the said notes of Messrs. Libbey, Baldwin, and Ford. The record title of all these stocks, however, remained for some time thereafter in the names of the original stockholders of the three companies.

16. At the same time, on August 28th, an agreement was made between Messrs. Baldwin, Libbey, and Ford, and the Sterling Glass Company, reciting the transaction, the facts as to said individual loans, stating the purpose that a "permanent company be organized to take over the ownership of the plants and assets of all the said companies," and providing that the Sterling Company assumed all the liabilities of the other parties upon the said notes; that upon payment of said notes the Sterling Company had the right (hereafter called "redemption right") to take over the stocks of the three companies then pledged as collateral for said notes; providing that under certain contingencies Mr. Libbey might wholly withdraw from all the obligations and benefits of the transaction, and that upon such withdrawal all such liability and rights should be assumed by and belong to Mr. Baldwin. Up to this point, therefore (August 28th, 1919), the record title of the stocks of the three companies was still in the original owners. But the equitable interest therein had in fact been purchased with money advanced, as set forth in paragraph 15, by the Sterling Company and Messrs. Libbey, Baldwin, and Ford, and apparently belonged to these four parties. Also, under the contract of August 28th, 1919, the Sterling Company had assumed the obligations of these three men (incurred when they borrowed the $1,610,000), and was therefore given the additional and special right, at any time, by paying those notes, to take over the stocks of the three companies (the "redemption right").

17. The next change took place on December 11, 1919. The expected bringing in of other interests referred to in paragraph 14

fell through. As this had been the main inducement interesting Messrs. Libbey and Ford in the whole transaction, they on that date exercised the right given them under the contract of August 28, 1919, and withdrew from the entire affair. Thereupon, under that contract Mr. Baldwin assumed the rights and obligations arising in the whole transaction. Accordingly the "redemption right" at this point apparently passed to Mr. Baldwin.

18. The next change that occurred was as follows:

(a) On December 6th, 1919, the stock of the Lockport Company, except for a few shares sufficient to qualify directors in the company, was transferred to Mr. H. C. Mandeville, then a director of the Thatcher Company.

(b) On January 5, 1920, the stock of the Travis Company, with a like exception, was transferred to Mr. Baldwin.

(c) On January 5, 1920, the stock of the Essex Company, with a like exception, was transferred to Mr. Frank L. Collins.

19. On June 2, 1920, Mr. Libbey transferred his half of the stock of the Sterling Company to the respondent, which thus became the owner of practically all of that stock. No further change took place in the status of this stock, or of the stocks of the three companies until the corporate dissolutions set forth in paragraph 22 below.

20. At no time whatsoever did the respondent, or the Sterling Company hold or own any of the stocks of the three companies, or have any voting power or control over their management.

At no time did any person or corporation controlling the respondent or owning a majority of its voting stock have any voting power in, or control over the management of any of the three companies. The sole connection at any time between the respondent and the stocks of the three companies lay in the remote relationship that for a part of the time the respondent controlled less than one-half, and for the rest of the time practically the whole of the stock of another company (Sterling) which in its turn had only an indeterminate beneficial interest, never liquidated, in the stocks of the three companies, but which never had any voting power in said companies or any voice whatsoever in their management.

21. The situation above set forth as to stock ownership was maintained unchanged until the dissolutions stated in paragraph 22. Meantime the actual assets of the three companies were transferred to the respondent as follows:

On June 17th, 1920, at the request of the stockholders of the Essex Company, that company transferred all the physical assets to the respondent.

One June 25th, 1920, upon similar request, the assets of the Travis Company were transferred to the respondent.

On the same date, upon similar request, the assets of the Lockport Company were transferred to the respondent. The said assets have now become entirely intermingled with each other and with those of the respondent, and any separation thereof is now impossible.

22. On September 9th, 1920, the Sterling Glass Company was dissolved; on October 20th, 1920, the Lockport Company was dissolved; on December 18th the Essex Glass Company was dissolved; on January 13th, 1921, the Travis Glass Company was dissolved.

The delay in the dissolution of the Travis Company was caused by the absence of Mr. Travis in Europe. The delay in the dissolution of the Essex Company was caused by the necessity of getting the Thatcher Company qualified to do business in Ohio, a procedure which took some months.

23. The respondent alleges that the foregoing statements in paragraphs 12 to 22, inclusive, contain all the relevant facts regarding its relation to the stocks of the Essex, Travis, Lockport, Hamilton, and Woodbury Companies and denies any allegations in said complaint inconsistent with or contradictory thereof, and any other allegation not specifically admitted, or not specifically denied herein.

The respondent denies that the effect of its control of the stock of the Sterling Glass Company, or any use of the same by voting or granting of proxies, or otherwise, has been to eliminate competition between the respondent and the said five licensees, or to restrain the commerce referred to in said complaint, or tend to create a monopoly of said line of commerce. The respondent denies that any such control by it of the stock of the Sterling Glass Company was ever used in any way for the purpose of the directing business policy, business conduct, or competition of the said five licensees, or any of them. The respondent says that the acquisition by it of the said licenses and physical assets of said five licensees was strictly in the nature of the actual carrying-on of its immediate lawful business and the natural and legitimate branches and extensions thereof, and that its ownership or control of one-half, and of the whole, of the stock of the Sterling Glass Company, was simply a temporary and formal means, never fully used, and only directed at the real purpose of the acquisition by the respondent directly of such licenses and physical assets, and for the temporary purpose of taking advantage of a certain option for such purchase, and to keep open the possibility of such purchase during the usual negotiations or the financing thereof.

24. The respondent further alleges that whatever relation to or interest in the stocks of the three companies it may have had, if any, wholly and finally ended upon the dissolution of said three companies, as set forth in paragraph 22.

It alleges that it is not now possible for it to divest itself of ownership or control of such stocks, because it never had such ownership or control, and because such stocks now no longer exist.

25. The respondent denies that it has violated or is now violating any of the provisions of section 7 of said act of October 15, 1914, and it alleges that the acquisition of the assets of other companies above set forth have been to the benefit of the public and the advance of the glass industry by the reduction of cost of production and distribution and the improvement of service.

II.

ANSWER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT APPROVED SEPTEMBER 26, 1914.

The respondent makes answer that the said complaint fails wholly to set forth any facts constituting a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create the Federal Trade Commission," etc., or establishing the jurisdiction

of said commission in the premises, and without waiving objections to the jurisdiction, or to other invalidities or defects of said complaint, and reserving all exceptions that can be taken thereto, the respondent makes further answer as follows:

1. The respondent denies that it has at any time violated section 5 of said act approved September 26, 1914, and denies that it has used or practiced at any time any unfair method of competition.

2. The respondent, so far as is relevant or necessary for making its defense under the violation last stated above charged, hereby incorporates herein the statements, allegations, and denials by it made in its reply to the violation first above charged. And the respondent denies each and every allegation of said complaint not herein specifically admitted or not specifically denied.

Wherefore, the respondent prays that said complaint may be dismissed and that it, the respondent, may go hence without day.

THATCHER MANUFACTURING COMPANY,
By H. C. MANDEVILLE, (Signed)
HERBERT KNOX SMITH, "
Its Attorneys.

AMENDED COMPLAINT.

(Dated July 18, 1922.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

In the matter of Thatcher Manufacturing Company. Docket No. 738.

AMENDED COMPLAINT.

Pursuant to the provisions of an act of Congress approved October 15, 1914 (the Clayton Act), entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Federal Trade Commission, having reason to believe that Thatcher Manufacturing Company, hereinafter referred to as respondent, is, and has been, violating the provisions of section seven (7) of said act of Congress, issues this amended complaint and states its charges in that respect as follows:

PARAGRAPH ONE. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of New York, with its principal office, manufacturing plant, and place of business at Elmira, New York, with branch offices and manufacturing plants at Kane, Pennsylvania, Streator, Illinois, Clarksburg and Cedar Grove, West Virginia, Mt. Vernon, Ohio, Lockport, New York, and in other States of the United States. It is, and since 1905 has been, engaged in manufacturing milk bottles, and in selling, shipping, and transporting such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and for many years has been engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH TWO. (a) Travis Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of West Virginia, having its principal office, place of business, and manufacturing plant at Clarksburg, West Virginia, with a branch plant at Cedar Grove, West Virginia, and was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(b) Essex Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of Ohio, having its principal office and place of business at Mt. Vernon, Ohio, and with manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, West Virginia, and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(c) Lockport Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of New Jersey, having its principal office, place of business, and manufacturing plant at Lockport, New York, and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(d) Woodbury Glass Company is, and for many years has been, a corporation organized under the laws of Indiana, with its principal office, place of business, and manufacturing plant at Winchester, Indiana, and is and has been engaged in manufacturing condiment bottles and bottles of other types and kinds, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and has been engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

(e) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of Pennsylvania with its principal office, place of business, and manufacturing plant at Pittsburgh, Pennsylvania. Formerly the J. T. & A. Hamilton Company was a partnership, but was later organized as a corporation as aforesaid. On and prior to August 28, 1919, and for some time subsequent thereto, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United

States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with respondent and with other persons, firms, and corporations similarly engaged.

PARAGRAPH THREE. The Owens Bottle Company is a corporation under the laws of Ohio and was organized originally as Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware. The Owens bottle-blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semiautomatic machines or by hand labor. The Owens bottle-blowing machine was the first and, until the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903, the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle-blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine and has secured and owns in its own right six or more patents covering such improvements and additions. The Owens Bottle Company did not and does not manufacture milk bottles.

PARAGRAPH FOUR. The Owens Bottle Company has licensed and leased or sold Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware, and the manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired and still owns the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire.

PARAGRAPH FIVE. After the respondent had acquired and was using said Owens bottle-blowing machines as aforesaid, the Hartford-Fairmont Company of Hartford, Connecticut, produced a patented and improved machine for successfully making milk bottles and other glassware automatically, and said Hartford-Fairmont machine was different from, and, in efficiency and economy of operation, equal or superior to the Owens bottle-blowing machine. The Hartford-Fairmont Company granted exclusive licenses to use its bottle-making machines for making milk bottles to four certain companies, namely, the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and J. T. & A. Hamilton Company, and also granted a nonexclusive license to the said Woodbury Glass Company to use said machines for producing condiment bottles, including the right to make fruit jars, grape juice, cider, vinegar, horse radish, and catsup bottles, and bottles and containers for

food and food ingredients. Such licenses so granted to the said Travis, Essex, Lockport, and Hamilton companies contained conditions and limitations under which the use of said machines for manufacturing milk bottles was exclusive in said four companies, and no license or machine could be transferred without the consent of Hartford-Fairmont Company. Under said licenses, the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and J. T. & A. Hamilton Company manufactured milk bottles, and sold and transported such bottles to purchasers among the several States of the United States and the District of Columbia, in interstate commerce in competition with each other and with the respondent.

PARAGRAPH SIX. The said bottle-making machines so produced, leased, and licensed by the Owens Bottle Company and Hartford-Fairmont Company, at the time the events herein set forth took place, were the only successful entirely automatic bottle-making machines devised and leased or sold as a complete unit, and the exclusive right to use said machines for manufacturing milk bottles was vested in and restricted to the respondent and the said Travis, Essex, Lockport, and Hamilton companies.

PARAGRAPH SEVEN. On or about the 28th day of August, 1919, the respondent, while engaged in commerce as aforesaid, acquired the whole of the stock or other share capital of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, the said corporations hereinabove described, while each of said corporations was engaged in interstate commerce as aforesaid in competition with the respondent. The effect of such acquisition of said stock or share capital was to substantially lessen competition between the respondent and each of said corporations whose stock or share capital was so acquired, namely: Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and between each of said corporations whose stock or other share capital was so acquired and each other of said corporations. Such acquisition of said stock and share capital also tended to create in the respondent a monopoly in interstate commerce in the milk bottle business, and was and is violative of said act of Congress approved October 15, 1914 (the Clayton Act). The scheme and the methods by which the respondent acquired the said stock or share capital of said corporations are hereinafter set forth substantially.

PARAGRAPH EIGHT. In 1919 a gentleman by name I. T. Axton, then president and principal stockholder of the Woodbury Glass Company, attempted to merge or consolidate the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and acquire the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. In pursuance of said plan Axton secured options on the outstanding capital stock of said Travis, Essex, Lockport, and Woodbury companies, such options expiring on or about August 28th, 1919. Failing to accomplish such merger himself, Axton, in July, 1919, approached F. E. Baldwin, the president and largest stockholder of the Thatcher Manufacturing Company, and inquired if Baldwin or the Thatcher Manufacturing Company would acquire or purchase the stock of the said four companies and the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. Thereupon, Baldwin and H. C. Mandeville, a director and

counsel of the Thatcher Manufacturing Company and subsequently its vice president, E. D. Libbey, president and a large stockholder of the Owens Bottle Company, and William Ford, a large stockholder in the Owens Bottle Company, agreed to purchase the stock of the Travis, Essex, Lockport, and Woodbury companies, and the Hartford-Fairmont machine and license of the Hamilton Company under the options held by Axton. In pursuance thereof they organized the said Sterling Glass Company in August, 1919, with an authorized capital stock of six hundred thousand dollars, of which five hundred thousand dollars was issued for cash, one-half of which was taken by Libbey, and the remaining one-half by the respondent and certain of its agents or employees.

PARAGRAPH NINE. On August 28, 1919, Axton caused the stockholders of the said Travis, Essex, Lockport, and Woodbury companies to meet in New York City, N. Y., in an office or room of the Guaranty Trust Company, said stockholders having with them the stock certificates in the respective companies ready for transfer and delivery on payment of the purchase price. On said date, Messrs. Baldwin, Mandeville, Libbey, and Ford met in another office or room of the Guaranty Trust Company, and Baldwin, Libbey, and Ford executed their separate, individual promissory notes to the Guaranty Trust Company for a total of one million, six hundred and ten thousand dollars ($1,610,000), and each endorsed the notes of the others so that all were liable on all three notes. The sum secured from the Guaranty Trust Company on said notes, together with the five hundred thousand dollars ($500,000) subscribed in cash to the capital stock of the Sterling Glass Company, was used to purchase all the capital stock of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company. The certificates of stock in the respective companies were endorsed in blank by the respective stockholders of the said companies, and by them delivered to the Guaranty Trust Company, and attached to the said notes of Baldwin, Libbey, and Ford as collateral security therefor.

PARAGRAPH TEN. On the 28th day of August, 1919, immediately after the purchase of said stock, the Sterling Glass Company and Baldwin, Libbey, and Ford entered into a written agreement which set forth the transaction and the facts as to said individual notes, and provided, among other things, that the Sterling Glass Company assume all liability of the other parties upon said notes, and upon the payment of said notes the Sterling Glass Company should have the right to take over the stock of said companies then pledged as collateral for said notes. Said agreement gave Ford and Libbey the option to retire from the said stock transaction, and in that event Baldwin was to assume all their liability thereunder and on the said notes, and was to procure the release of Ford and Libbey from said notes, and held them harmless against liability thereon, and repay to Libbey the two hundred and fifty thousand dollars ($250,000) invested by Libbey in the capital stock of the Sterling Glass Company. Upon the payment of said money and the release from endorsement and liability, Ford and Libbey were to release to Baldwin all interest in the stock of Sterling Glass Company and transfer the same to Baldwin's nominee, and Baldwin might thereafter proceed as he saw fit.

PARAGRAPH ELEVEN. On or about the same date, August 28, 1919, the Thatcher Manufacturing Company acquired by purchase the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company, and by contract of sale dated August 29, 1919, the respondent acquired all the milk-bottle business of the said Hamilton Company in the United States, outside of Allegheny County, Pennsylvania, and the said contract provided that for a period of ten years from January 1, 1920, the vendors individually should not manufacture and sell bottles outside the limits of Allegheny County, Pennsylvania, and should not manufacture and sell milk bottles made on the Owens bottle-making machine in Allegheny County, Pennsylvania.

PARAGRAPH TWELVE. On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw, and on said date so notified Baldwin and the respondent. The operation of the Essex Glass Company, Travis Glass Company, Lockport Glass Company, and the Woodbury Glass Company, after the purchase of the stock on August 28th, 1919, was continued under their former management until January 1, 1920, when the entire control and direction of said companies was brought to the offices of the respondent at Elmira, New York, and thereafter said companies and their plants were operated by the respondent as a part thereof.

PARAGRAPH THIRTEEN. In June, 1920, the certificates of stock in the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, held as aforesaid by the Guaranty Trust Company of New York, were transmitted by the Guaranty Trust Company to its agents at Elmira, New York, for formal transfer. Transfer of said shares of stock upon the books of the Travis, Essex, Lockport, and Woodbury Companies was then made, the stock of said companies being reissued to F. E. Baldwin, president of the Thatcher Manufacturing Company, H. C. Mandeville, its counsel and a stockholder and director and thereafter vice president, R. W. Niver, a vice president and director of the Thatcher Manufacturing Company, and F. L. Collins, auditor of the Thatcher Manufacturing Company, and in some instances a few shares to other persons sufficient to qualify the requisite directors in each company. All the capital stock of each of said four companies was issued to these four men, a different person being the principal transferee in the case of each company, and the other qualifying shares were issued to the other three of the four, except that where the authorized number of the directors exceeded four, qualifying shares were issued to a sufficient number of the old directors to constitute the requisite number of directors. The transferees of the stock in said transactions paid no money or other consideration for the same, nor did they receive possession of any certificates of stock. The certificates of stock which were thus issued were delivered to the agent of the Guaranty Trust Company and returned to the Guaranty Trust Company in New York where said certificates were placed as before, namely: Attached to and as collateral security for the said Baldwin, Ford, and Libbey notes.

PARAGRAPH FOURTEEN. Notice from Libbey and Ford of their intention to retire from said transaction was given as hereinbefore recited, and Baldwin nominated the Thatcher Manufacturing Com-

pany as the transferee of the 2,500 shares of capital stock of Sterling Glass Company owned by Libbey, and the same was so transferred by Libbey upon the payment to him by the Thatcher Manufacturing Company of the sum of two hundred and fifty thousand dollars ($250,000) with interest. The money to purchase said 2,500 shares of stock was secured by increasing the capital stock of the Thatcher Manufacturing Company from one million dollars ($1,000,000) to one million, six hundred and twenty-five thousand dollars ($1,625,000) on or about April 20, 1920.

Paragraph Fifteen. Prior to June, 1920, the Thatcher Manufacturing Company accomplished a bond issue in the sum of two million dollars ($2,000,000) secured by a first mortgage to the Guaranty Trust Company of New York as trustee on all the assets of the Thatcher Manufacturing Company, Sterling Glass Company, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the capital stock of Woodbury Glass Company. The said bonds when executed were delivered to the underwriters, Bonbright and Company and Hemphill Noyes & Company, who paid over the proceeds thereof to H. C. Mandeville, who then and there as part of a simultaneous transaction produced the deeds and bills of sale of the Travis, Essex, Lockport, and Sterling Companies to the Thatcher Manufacturing Company, and delivered said deeds and bills of sale to the underwriters for recording. The proceeds of said bond issue were then and there paid by said Mandeville to the Guaranty Trust Company, and in return therefor the Guaranty Trust Company delivered to the said Mandeville the said notes executed by Baldwin, Ford and Libbey, and the stock certificates attached thereto.

Paragraph Sixteen. In the month of June, 1920, at the request of Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders of the Travis, Essex, Lockport, and Sterling Companies, respectively, the directors of said companies, namely, Baldwin, Mandeville, Collins, and Niver, and associates, resolved to transfer all the assets, rights and property of the Travis, Essex, Lockport, and Sterling Companies, respectively, to the respondent. Resolutions providing for such transfer were proposed and adopted by Baldwin, Mandeville, Collins, and Niver, and associates, as the stockholders and directors of each of said companies. During the month of June, 1920, in pursuance of said resolutions, all the assets, rights, licenses, and properties of the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company, respectively, were transferred by deeds and bills of sale to the respondent. The Hartford-Fairmont licenses of the Travis, Essex, Lockport, Woodbury, and Hamilton Companies were assigned and transferred to the respondent on or about June 1, 1920, and the Hartford-Fairmont Company assented to the same.

Paragraph Seventeen. Having caused all the assets, rights, and property of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company to be transferred and conveyed to it by deeds and bills of sale, as hereinbefore recited, the respondent proceeded to bring about a dissolution of the said Travis, Essex, Lockport, and Sterling Companies, and through its said officers and agents, namely, Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders,

directors, and officers of said companies also, adopted resolutions for the dissolution of the said Travis, Essex, Lockport, and Sterling Companies. In pursuance of said policy the Sterling Glass Company was dissolved September 9, 1920; the Lockport Glass Company was dissolved October 20, 1920; the Essex Glass Company was dissolved September 18, 1920, and the Travis Glass Company was dissolved January 13, 1921.

PARAGRAPH EIGHTEEN. Prior to the purchase of the stock of the Travis, Essex, Lockport, and Woodbury Companies and the milk bottle business and the Hartford-Fairmont machine and license of the Hamilton Company, each of the said companies was a competitor in interstate commerce in the milk bottle business with the respondent, and with each other. On and after the purchase of said stock each of said companies, namely, the Travis, Essex, Lockport, Woodbury, and Hamilton Companies ceased to compete in interstate commerce with the respondent and with each other.

PARAGRAPH NINETEEN. The acquisition of the capital stock of the said Travis, Essex, Lockport, and Woodbury Companies as hereinbefore set forth was contrary to law, and in violation of the provisions of an act of Congress approved October 15, 1914 (the Clayton Act), and especially of section 7 thereof. The transfer to the respondent of the assets, rights, and properties of the Travis, Essex, Lockport, and Sterling Companies and the dissolution of said companies was an artifice and subterfuge for evading the provisions of said act of Congress approved October 15, 1914 (the Clayton Act). The respondent secured and retains and enjoys the fruits and benefits of such violations, artifice, and subterfuge, and should be ordered to cease and desist from such violations, and divest itself of the stock acquired contrary to the provisions of section 7 of said act of Congress, so that competition may be restored and encouraged, and a monopoly in the milk bottle business prevented.

Wherefore, the premises considered, the Federal Trade Commission, on this 18th day of July, A. D., 1922, now here issues this its amended complaint against said respondent.

Notice.

Notice is hereby given you, Thatcher Manufacturing Company, respondent herein, that the 6th day of September, 1922, at 10.30 o'clock in the forenoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this amended complaint, at which time and place you shall have the right, under said act, to appear and show why an order should not be entered by said commission requiring you to cease and desist from the violation of the law charged in this complaint.

In witness whereof, the Federal Trade Commission has caused this amended complaint to be signed by its secretary, and its official seal to be hereto affixed, at Washington, D. C., this 18th day of July, 1922.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Acting Secretary.

ANSWER TO AMENDED COMPLAINT.

(Filed August 10, 1922.)

Before the Federal Trade Commission.

Docket No. 738.

Federal Trade Commission

vs.

Thatcher Manufacturing Company.

ANSWER OF RESPONDENT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF THE ACT OF CONGRESS APPROVED OCTOBER 15TH, 1914 (THE CLAYTON ACT).

Now comes the Thatcher Manufacturing Company, respondent in the above entitled cause, and makes answer to the amended complaint therein, that the Federal Trade Commission has no jurisdiction in respect of the acts and transactions alleged in said complaint, and that said complaint fails to set forth facts constituting a violation of section 7 of the act of Congress approved October 15th, 1914, known as the Clayton Act, or of any law the enforcement of which lies within the power of said commission.

Without waiving the defense above set forth, or any of the other invalidities or defects in said complaint, and reserving the benefits of all exceptions that can be taken thereto, and further denying that the said complaint and proceedings based thereon are in the interest of the public, the respondent makes further answer to the said complaint, as follows:

SECTION 1. The respondent admits the allegations of paragraph one of said complaint, except that it denies that it has any of the branch offices mentioned therein.

SECTION 2. The respondent admits the allegations of paragraph two of said complaint, except—

That it denies any implication in subsection (a) thereof to the effect that the said branch plant of Travis Glass Company at Cedar Grove was on or before August 28, 1919, manufacturing or selling milk bottles in competition with anyone; because respondent says that on said date said Cedar Grove plant had not been completed, and was not completed when the title thereto was transferred to respondent.

That is denies any implication in subsection (d) thereof to the effect that the Woodbury Glass Company was at any time during the transaction set forth in competition either with the respondent or with the Essex, Lockport, Travis, or Hamilton companies, named in said paragraph.

SECTION 3. As to paragraph three respondent says that it has no sufficient information as to the allegations thereof and therefore leaves complainant to its proof thereon. Respondent, however, denies any implication therein that the Owens machine used by respondent during the period in question was a "modern machine."

SECTION 4. The respondent admits the allegations of paragraph four, except—

That the respondent says that it has no knowledge as to the truth of the allegations as to the control, manufacture, sale, licensing and leasing of the Owens machines by the Owens Bottle Company, and on this point, therefore, leaves the complainant to its proof.

That the respondent denies that it owns the exclusice right to all improvements that may be made or acquired by the Owens Bottle Company, on the Owens milk bottle machine, or to any machines that said Owens Company may acquire.

SECTION 5. The respondent admits the allegations of paragraph five, except that it denies that the said licenses of milk bottle machines granted to the said four companies were exclusive, except to the extent that under certain conditions set forth in said licenses, and only under such conditions, such use of said machinery for such purpose was made exclusive in said four companies.

SECTION 6. The respondent admits the allegations of paragraph six, except as to the absolutely exclusive nature of the licenses to Essex, Travis, Lockport, and Hamilton Companies which it denies. Respondent admits that the milk bottle machines of the Owens Bottle Company and the Hartford-Fairmont Company, at the time therein referred to, were the only successful entirely automatic bottle-making machines leased as a complete unit. But respondent says that at that time and ever since then there were readily available on the market machines controlled by outside parties other than the said Owens Company, or Hartford-Fairmont Company, capable of feeding glass automatically, and also machines controlled by companies other than the two named companies, capable of forming such glass, when so fed, into milk bottles, so that the two types of machines could freely be secured and combined, and were, and now are, as a matter of fact, so combined into an efficient automatic unit for making milk bottles by many manufacturers other than the respondent, and these units were and are subject to lower royalties and less restrictions than those applied to either the Owens or Hartford-Fairmont units; and milk bottles automatically made on these "outside" units were and are widely sold in free competition with those sold by respondent.

SECTION 7. The respondent denies the allegations of paragraph seven.

SECTION 8. As to paragraphs eight, nine, and ten, respondent says that it has no sufficient information as to the allegations thereof (except as set forth in sections 23 to 35, inclusive, hereof below), and therefore leaves complainant to its proof.

SECTION 9. As to paragraph ten, the respondent further says that the said paragraph is an attempt to state legal conclusions drawn from the written agreement of August 28, 1919, and, therefore, neither admits nor denies such conclusions, but leaves it to the complainant to introduce the said agreement, so that the same may speak for itself.

SECTION 10. The respondent admits the allegations of paragraph eleven, except that the respondent says that the consent of the Hartford-Fairmont Company was a prerequisite to any assignment of the

said Hamilton license, and that the said assignment of such license from Hamilton Company to the respondent and the consent of the Hartford-Fairmont Company thereto were both made on June 1, 1920, and not before that date.

SECTION 11. Respondent admits the allegations of paragraph twelve, except—

That it denies that it was notified of Mr. Libbey's withdrawal.

That it denies that the control and direction of Essex, Travis, Lockport, or Woodbury Companies was exercised by the respondent prior to April 10, 1920.

SECTION 12. As to the allegations of paragraph thirteen, respondent says that it has no information (except as set forth in sections 23 to 35 inclusive, hereof below), and therefore leaves complainant to its proof.

SECTION 13. Respondent admits the allegation of paragraph fourteen, except that it denies (as set forth in section 11 above) that it was notified of Mr. Libbey's intention to withdraw.

SECTION 14. The respondent admits the allegations of paragraphs fifteen and sixteen, except that it says that the bond issue, referred to in paragraph fifteen, was not "accomplished prior to June, 1920," and not until July 3, 1920, and it further says that there is an obvious inconsistency on this question of date between paragraphs fifteen and sixteen, in that paragraph sixteen states that "during the month of June, 1920," the assets of the Travis, Essex, Lockport, and Sterling Companies were transferred by deeds and bills of sale to the respondent; whereas in paragraph fifteen, which apparently all relates to a date prior to June, 1920, it is said that these deeds and bills of sale were delivered to the underwriters.

If, however, it is intended by said two paragraphs to state that the said bonds were executed and became effective and were delivered to the underwriters only after the execution and delivery of the said deeds and bills of sale, the respondent admits the truth of allegations so stated.

SECTION 15. As to paragraph seventeen, respondent admits that it caused the dissolution of Sterling Company and the transfer of its assets to respondent.

It also admits that the Sterling, Lockport, Essex, and Travis Companies were dissolved on the dates alleged.

The rest of said paragraph is denied.

SECTION 16. The respondent admits the allegations of paragraph eighteen, except—

That is denies that the Woodbury Company was even at any time in competition either with the respondent or with the Travis, Essex, or Lockport Companies, because, the respondent says, that it and the Travis, Essex, and Lockport Companies produced only milk bottles, while the Woodbury Company never produced milk bottles, but produced bottles of entirely different types, and that, therefore, the two lines of business never came in competition.

That it further denies any implication therein contained that the respondent purchased any of the stock of Travis, Essex, or Lockport Companies.

SECTION 17. The respondent denies the allegations of paragraph nineteen.

SECTION 18. The respondent says that all the machinery operated by it or operated formerly by Essex, Travis, Lockport, or Hamilton Companies in making milk bottles was and is used under licenses from the said Owens Company or from the said Hartford-Fairmont Company, or both, and that all said machinery was and is fully covered and protected by United States patents, which fully grant the right to the licensee thereof to exclude all others from such use, and that any monopoly or factor of monopoly, or any restraint of trade, or lessening of competition rising in connection with the use of such machinery, was and is based upon and derived from such patent rights and patents, and is lawfully held and exercised by virtue of lawful patent grants by the United States.

SECTION 19. The respondent further says that in the case of the Hamilton Company license there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and certain machinery and that further, as to the Woodbury Company, that company did not make milk bottles, but only condiment bottles, bottles for food and food ingredients and for fruit juices and the like, and that said company was not and never has been a competitor of the respondent or of the Essex, Travis, or Lockport Companies, or of the milk bottles business of the Hamilton Company.

SECTION 20. The respondent further alleges that neither Mr. F. E. Baldwin, nor any other person, during the time of the transactions set forth in said complaint, held a majority of the voting stock of the respondent company and the respondent denies that it or the Sterling Company ever held or owned any of the stocks of the Essex, Travis, Hamilton, or Lockport Companies, or had, or in any way exercised, any voting power over said companies by virtue of any interests so held in such stock and that at no time did any person or corporation controlling the respondent or owning a majority of its voting stock, have any voting power as to any of the stocks of the said four companies.

SECTION 21. The respondent further denies that the effect of its control of the stock of the Sterling Glass Company, or any use of the same by voting or granting of proxies, or otherwise, has been to eliminate competition between the respondent, Travis, Lockport, Essex, Hamilton, and Woodbury Companies, or to restrain interstate commerce, or to create a monopoly in said line of commerce. The respondent denies that any such control by it in the stock of the Sterling Company was ever used in any way for the purpose of directing the business policy, business conduct, or competition of the said last named five companies, or any of them.

The respondent alleges that its acquisition of the said licenses and physical assets of the said Essex, Lockport, Travis, and Hamilton Companies was strictly in the nature of the actual carrying on of its immediate lawful business and the natural and legitimate branches thereof. Respondent further alleges that it is now wholly impossible to segregate the said assets of said four companies so as to reestablish the status quo existing before such acquisition of assets.

SECTION 22. The respondent further alleges that whatever relation to, or interest in, the stocks of the said five companies it may have, if any, such relation and interest wholly and finally ended upon the dissolution of the Essex, Travis, and Lockport Companies (except

as to the Woodbury Company, which was not a competitor) and it alleges that it is not now possible for it to divest itself of ownership or control of such stocks because it never had such ownership or control and because (except as to said Woodbury Company) such stocks no longer exist.

SECTION 23. The respondent says that it is impossible, merely by way of direct reply to said complaint, to set forth plainly and sufficiently, for the fair and full information of the honorable commission, the character of the transactions which constitute the issue. The respondent respectfully desires for that purpose to present in this its reply a clear statement of the essential facts. The respondent understands from said complaint and believes that the underlying question involved in the alleged violation of section 7 of the Clayton Act is the relation of the respondent to the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company. The respondent, therefore, makes the following statement as to such relation, which statement covers all the essential facts relevant thereto.

SECTION 24. The cases of the Hamilton and Woodbury Companies may first be disposed of.

(a) In the cases of the Hamilton Company there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and machinery.

(b) The Woodbury Company did not make any milk bottles, but only condiment bottles. It was not and never has been in any way competitor of the respondent or of the Essex, Travis, or Lockport Companies.

(c) The remaining companies, Essex, Travis, and Lockport Glass Companies, are still to be considered. They will be referred to hereafter as the "three companies." The facts set forth below are all the relevant facts relating to the connection of the respondent with the stocks of these companies.

SECTION 25. In addition to the three companies, there appeared as essential parties to the transactions the Sterling Glass Company, the Thatcher Manufacturing Company (the respondent), Messrs. F. E. Baldwin, Edward D. Libbey, and William Ford, and later Mr. H. C. Mandeville and Mr. Frank L. Collins. Mr. Baldwin was president and one of the largest stockholders in the respondent company. But at no time during the transactions set forth below did he (or anyone else) hold a majority of the voting stock of the respondent company. Mr. Mandeville was a director and later vice president of respondent. Mr. Collins was one of its employees. Messrs. Libbey and Ford represented outside interests.

SECTION 26. The entire transaction in question began in August 1919, and was based on the fact that there were then outstanding and available certain options on the stocks of the three companies. There was also the expectation (never realized) that certain other interests would be brought in. It was not at that time settled in the minds of the gentlemen taking part in the transaction, as to what interests, person, or company would be chosen as the final owner of the assets of the three companies. Considerable negotiations were pending, necessitating probable delay. The option time was comparatively short. The Sterling Glass Company was therefore formed on August 25, 1919 to serve merely as a temporary means through which

if necessary, the desired rights could be acquired quickly. It issued $500,000 par value of its stock. Of this a little less than one half was taken by the respondent at par and the other half by Mr. Libbey.

SECTION 27. On August 28th and 29th, 1919, Messrs. Libbey, Baldwin and Ford discounted at the Guaranty Trust Company their separate individual notes for a total of $1,610,000. The sum thus borrowed, together with the $500,000, subscribed to the Sterling Company, was on that day used to purchase all the stocks of the three companies, in accordance with the said outstanding options. These stock certificates were endorsed in blank and delivered to the Guaranty Trust Company as collateral to secure the said notes of Messrs. Libbey, Baldwin and Ford. The record title of all these stocks, however, remained for some time thereafter in the names of the original stockholders of the three companies.

SECTION 28. At the same time, on August 28, an agreement was made between Messrs. Baldwin, Libbey and Ford and the Sterling Glass Company, reciting the above transaction, the facts as to said individual loans, stating the purpose that a "permanent company be organized to take over the ownership of the plants and assets of all the said companies," and providing that the Sterling Company assumed all the liabilities of the other parties upon the said notes; that upon payment of said notes the Sterling Company had the right (hereafter called "redemption right") to take over the stocks of the three companies then pledged as collateral for said notes; providing that under certain contingencies Mr. Libbey might wholly withdraw from all the obligations and benefits of the transaction, and that upon such withdrawal all such liability and rights should be assumed by and belong to Mr. Baldwin. Up to this point, therefore, (August 28, 1919) the record title of the stocks of the three companies was still in the original owners. But the equitable interest therein had in fact been purchased with money advanced, as set forth in section 27, by the Sterling Company and Messrs. Libbey, Baldwin and Ford, and apparently belonged to these four parties. Also, under the contract of August 28, 1919, the Sterling Company had assumed the obligations of these three men (incurred when they borrowed the $1,610,000) and was therefore given the additional and special right, at any time, by paying those notes, to take over the stocks of the three companies (the "redemption right").

SECTION 29. The next change took place on December 11, 1919. The expected bringing in of other interests, referred to in section 26, fell through. As this had been the main inducement interesting Messrs. Libbey and Ford in the whole transaction, they on that date exercised the right given them under the contract of August 28, 1919, and gave notice to Mr. Baldwin of their retirement from the entire affair. Upon such retirement, under that contract, Mr. Baldwin assumed the rights and obligations arising in the whole transaction. Accordingly the "redemption right" at this point apparently passed to Mr. Baldwin.

SECTION 30. The next change that occurred was as follows:

(a) On December 6, 1919, the stock of the Lockport Company, except for a few shares sufficient to qualify directors in the Company, was transferred to Mr. H. C. Mandeville, then a Director of the Thatcher Company.

(b) On January 5, 1920, the stock of the Travis Company, with a like exception, was transferred to Mr. Baldwin.

(c) On January 5, 1920, the stock of the Essex Company, with a like exception, was transferred to Mr. Frank L. Collins.

SECTION 31. On June 2, 1920, Mr. Libbey transferred his half of the stock of the Sterling Company to the respondent, which thus became the owner of practicaly all of that stock and the $250,000 subscribed by Mr. Libbey on such stock was repaid to him in pursuance of the contract of August 28, 1919. No further change took place in the status of this stock, or of the stocks of the three companies until the corporate dissolutions set forth in section 34 below.

SECTION 32. At no time whatsoever did the respondent, or the Sterling Company hold or own any of the stocks of the three companies, or have or exercise any voting power or control over their management.

At no time did any person or corporation controlling the respondent or owning a majority of its voting stock have any voting power in, or control over the management of any of the three companies. The sole connection at any time between the respondent and the stocks of the three companies lay in the remote relationship that for a part of the time the respondent controlled less than one-half, and for the rest of the time practically the whole of the stock of another company (Sterling) which in its turn had only an indeterminate beneficial interest, never liquidated, in the stocks of the three companies, but which never had any voting power in any of said companies or any voice whatsoever in their management.

SECTION 33. The situation above set forth as to stock ownership was maintained unchanged until the dissolutions stated in section 34. Meantime the actual assets of the three companies were transferred to the respondent as follows:

On June 17, 1920, at the request of the stockholders of the Essex Company, that company transferred all the physical assets to the respondent.

On June 25, 1920, upon similar request, the assets of the Travis Company were transferred to the respondent.

On the same date, upon similar request, the assets of the Lockport Company were transferred to the respondent. The said assets have now become entirely intermingled with each other and with those of the respondent, and any separation thereof is now impossible.

SECTION 34. On September 9, 1920 the Sterling Glass Company was dissolved; on October 20, 1920 the Lockport Glass Company was dissolved; on December 18, 1920 the Essex Glass Company was dissolved; on January 13, 1921 the Travis Glass Company was dissolved.

The delay in the dissolution of the Travis Company was caused by the absence of Mr. Travis in Europe. The delay in the dissolution of the Essex Company was caused by the necessity of getting the Thatcher Company qualified to do business in Ohio, a procedure which took some months.

SECTION 35. The respondent alleges that the foregoing statements in Sections 23 to 34, inclusive, contain all the relevant facts regarding its relation to the stocks of the Essex, Travis, Lockport, Hamilton and Woodbury Companies and denies any allegations in said com-

plaint inconsistent with or contradictory thereof, and any other allegation not specifically admitted, or not specifically denied herein.

SECTION 36. Respondent denies that the acquisition by it of the assets of the Travis, Lockport, Essex or Hamilton Companies, or any other of the acts of the respondent alleged in said amended complaint tended to create in the respondent a monopoly in interstate commerce in the milk bottle business. And respondent says that there were at least twelve other companies in the United States making and selling milk bottles in competition with respondent, some of them powerful and very active and successful business concerns, using efficient automatic milk bottle machinery of types other than used by respondent, and on more favorable licensing terms, as set forth above in section 6.

SECTION 37. The respondent denies that it has violated or is now violating any of the provisions of section seven of the said act of October 15th, 1924.

Wherefore the respondent prays that the said complaint may be dismissed and that it, the respondent, may go hence without day.

THATCHER MANUFACTURING COMPANY.
By HERBERT KNOX SMITH, (signed)
Its Attorney.

STIPULATION AS TO FACTS.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	DOCKET NO. 738.

STIPULATION AS TO FACTS.

Pursuant to the provisions of an act of Congress approved September 26, 1914, and an act of Congress approved October 15, 1914, the Federal Trade Commission, on the first day of March, 1921, issued its complaint against the respondent above named, and caused such complaint to be served as required by law, in which complaint it was charged that said respondent was and had been using unfair methods of competition in commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, and was and had been violating the provisions of section 7 of the act of Congress approved October 15, 1914; whereupon said respondent entered its appearance and made answer in writing to said complaint, and said respondent being desirous of expediting the hearing of said complaint and avoiding the expense incident to the taking of testimony;

Now, therefore, it is hereby stipulated and agreed by and between W. H. Fuller, chief counsel for the Federal Trade Commission, and Thatcher Manufacturing Company, respondent above named, subject to approval by the Federal Trade Commission, that the following statement of facts may be taken as facts of this proceeding before the Federal Trade Commission and in lieu of testimony before the commission, in support of the charges stated in the complaint or in opposition thereto; that the said commission may proceed further upon said statement, together with such testimony as may be adduced

by either party, to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

STATEMENT OF FACTS.

(a) The Thatcher Manufacturing Company is and for many years has been, a corporation organized and existing under the laws of the State of New York, with its principal office, manufacturing plant and place of business in the city of Elmira, N. Y., and has branch offices and manufacturing plants at Clarksburg and Cedar Grove, W. Va., Mount Vernon, Ohio, Lockport, N. Y., and in other States of the United States.

(b) The Sterling Glass Company was, from its organization in August, 1919, until dissolution, in September, 1920, a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at Elmira, N. Y.

(c) The Travis Glass Company, in 1919 and 1920, and for many years prior thereto, was a corporation organized under the laws of the State of West Virginia, with its principal office and place of business and principal manufacturing plant at Clarksburg, W. Va., and having a branch plant at Cedar Grove, W. Va.

(d) The Essex Glass Company, in 1919 and 1920 and for many years prior thereto, was a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business at Mount Vernon, Ohio, and having manufacturing plants at Mount Vernon, Ohio, and at Parkersburg, W. Va.

(e) The Lockport Glass Company, in 1919 and 1920 and for many years prior thereto, was a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at Lockport, N. Y., and having its principal manufacturing plant at Lockport, N. Y.

(f) The Woodbury Glass Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business and principal manufacturing plant at Winchester, Ind.

(g) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office, place of business, and principal manufacturing plant at Pittsburgh, Pa.

EXHIBITS.

The documents attached hereto and marked respectively Exhibits A to Z–10, inclusive, are made a part of this stipulation, and Exhibits A to Z–10, inclusive, are admitted to be true and correct copies, respectively, of the several documents and records hereinafter named, and such exhibits may be treated and considered by the Federal Trade Commission as evidence and testimony in this proceeding the same as if duly proved, authenticated, offered and admitted in evidence.

Exhibit A is a true copy of a contract or agreement between the Travis Glass Company and I. T. Axton.

Exhibit B is a true copy of a contract or agreement between Travis Glass Company and I. T. Axton.

Exhibit C is a true copy of a contract or agreement between O. P. Lamb et als. and I. T. Axton.

Exhibit D is a true copy of a contract or agreement between Lockport Glass Company and I. T. Axton.

Exhibit E is a true copy of a contract or agreement between Ralph S. Keep et als. and I. T. Axton.

Exhibit F is a true copy of the certificate of incorporation of Sterling Glass Company, Inc.

Exhibit G is a true copy of a contract or agreement made August 28, 1919, between Francis E. Baldwin, of the first part, William Ford, of the second part, Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., of the fourth part.

Exhibit H is a true copy of a letter dated September 2, 1919, from H. C. Mandeville to F. E. Baldwin.

Exhibit I is a true copy of a letter or notice from William Ford to Francis E. Baldwin and Thatcher Manufacturing Company.

Exhibit J is a true copy of a letter or notice from E. D. Libbey to Francis E. Baldwin and Thatcher Manufacturing Company.

Exhibit K is a true copy of the annual report for 1919 of Francis E. Baldwin, president of the Thatcher Manufacturing Company, to the stockholders and directors of the Thatcher Manufacturing Company.

Exhibit L is a true copy of an agreement between Francis E. Baldwin, of the first part and Hemphill, Noyes & Company, and Bonbright & Company, Inc., of the second part.

Exhibit M is a true copy of the minutes of a special meeting of the stockholders of Thatcher Manufacturing Company, held April 12, 1920.

Exhibit N is a true copy of a letter or notice from Thatcher Manufacturing Company, by F. E. Baldwin, president and others, to Sterling Glass Company, Inc., and the board of directors thereof.

Exhibit O is a true copy of the minutes of a special meeting of the stockholders of Sterling Glass Company, Inc., held on the 7th day of June, 1920.

Exhibit P is a true copy of a deed of conveyance executed on the 7th day of June, 1920, by Sterling Glass Company, Inc., to Thatcher Manufacturing Company.

Exhibit Q is a true copy of the minutes of a special meeting of the board of directors of Thatcher Manufacturing Company on June 3, 1920.

Exhibit R is a true copy of the minutes of a special meeting of the board of directors of Sterling Glass Company, Inc., held on the 7th day of June, 1920.

Exhibit S is a true copy of a letter or notice from H. E. Travis and the other persons therein mentioned to Travis Glass Company and the board of directors thereof.

Exhibit T is a true copy of the minutes of a special meeting of the stockholders of Travis Glass Company, held on June 12, 1920.

Exhibit U is a true copy of a letter or notice from F. E. Baldwin and others to the Travis Glass Company and the board of directors thereof.

Exhibit V is a true copy of a deed dated June 25, 1920, from Travis Glass Company to Thatcher Manufacturing Company.

Exhibit W is a true copy of a letter or agreement given by Thatcher Manufacturing Company to Travis Glass Company.

Exhibit X is a true copy of a letter or notice from R. W. Lamb and others to Essex Glass Company and the board of directors thereof.

Exhibit Y is a true copy of the minutes of a special meeting of the stockholders of Essex Glass Company held at Mount Vernon, Ohio, on June 11, 1920.

Exhibit Z is a true copy of a letter or notice given by F. E. Baldwin and others to the Essex Glass Company and the board of directors thereof.

Exhibit Z–1 is a true copy of a deed dated the 17th day of June, 1920, from Essex Glass Company to Thatcher Manufacturing Company.

Exhibit Z–2 is a true copy of a notice or agreement given by Thatcher Manufacturing Company to Essex Glass Company.

Exhibit Z–3 is a true copy of a letter or notice given by F. E. Baldwin and others to Lockport Glass Company and the board of directors thereof.

Exhibit Z–4 is a true copy of the minutes of a special meeting of the stockholders of Lockport Glass Company on the 24th day of June, 1920.

Exhibit Z–5 is a true copy of a letter or notice given by F. E. Baldwin and others to Lockport Glass Company and the board of directors thereof.

Exhibit Z–6 is a true copy of a deed dated the 25th day of June, 1920, given by Lockport Glass Company to Thatcher Manufacturing Company.

Exhibit Z–7 is a true copy of a notice or agreement given by Thatcher Manufacturing Company to Lockport Glass Company.

Exhibit Z–8 is a true copy of a letter dated October 18, 1920, written by the Thatcher Manufacturing Company, by F. E. Baldwin, its president, to Federal Trade Commission.

Exhibit Z–9 is a true copy of the printed advertisement of Bonbright & Co. of the sale of $2,000,000, 10-year, 7% gold bonds of the Thatcher Manufacturing Company.

Exhibit Z–10 is a true copy of a letter dated April 23, 1920 written by Francis E. Baldwin, president of the Thatcher Manufacturing Company to Bonbright & Co., Inc., and Hemphill, Noyes & Co.

This stipulation is without prejudice to the rights of either party to adduce additional evidence and testimony in this proceeding.

(Signed) W. H. FULLER,
Chief Counsel, Federal Trade Commission.

" THATCHER MANUFACTURING COMPANY,
By HERBERT KNOX SMITH, *Attorney.*

JUNE 21, 1922.

Approved and filed.

By the commission:

(Signed) J. P. YODER, *Secy.*
O. B. J., *Clerk.*

Exhibit A.

This agreement, made and executed in duplicate this thirtieth day of May, nineteen hundred and nineteen, by and between Travis Glass Company, of Clarksburg, West Virginia, party of the first part, and I. T. Axton, of the city of Louisville, Kentucky, party of the second part, witnesseth:

The said party of the first part, for and in consideration of the sum of one dollar ($1.00) to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to and with the party of the second part that it will sell and deliver to the party of the second part all of the capital stock of the company above mentioned upon the further payment of the sum of five hundred thousand dollars ($500,000) in cash, or, at the option of the said party of the second part, one hundred and fifty thousand dollars ($150,000) in cash, one hundred and fifty thousand dollars ($150,000) of seven per cent (7%) cumulative preferred stock, preferred both as to dividends and assets, in the event of dissolution or liquidation, or seven per cent (7%) bonds and three hundred thousand dollars ($300,000) of common stock of a company to be organized for the purpose of taking over this and other companies engaged in the milk-bottle business, provided that the party of the second part shall elect to purchase all of said stock of said company and accept the terms of this agreement as herein set forth, on or before September 1, 1919.

In the event that said second party shall elect to accept the terms of this agreement, it is understood and agreed upon by the parties hereto that the said bonds above mentioned, in the event that bonds are issued, are to be secured by a first mortgage upon all of the assets of said proposed new corporation to be formed, and the total amount of bonds to be issued by said new corporation is not to exceed sixty per cent (60%) of the value of the assets transferred to the new corporation.

The party of the first part covenants and agrees that during the life of this option it will not intentionally or substantially depreciate the assets of said company, and, in the event that said second party elects to accept the terms of this agreement, that the assets of said company shall not be intentionally or substantially depreciated until such time as this agreement is fully performed.

It is mutually agreed and understood between the parties hereto that the said second party shall have the right, either in person or by a representative to be selected by him, to verify the value of the assets of said company by an appraisal and audit of the property, books of account, and records of the company, and that said first party will produce a financial statement showing the conditions of its business as of June 1, 1919, certified to as to its correctness by the president and treasurer of said company, on or before June 15, 1919.

TRAVIS GLASS COMPANY,
By H. E. TRAVIS,
President.

Exhibit B.

NEW YORK, *July 26, 1919.*

This contract made and entered into this 26th day of July, 1919, by and between I. T. Axton, Louisville, Kentucky, party of the first part, and the Travis Glass Company, Clarksburg, W. Virginia, party of the second part, witnesseth:

That for and in consideration of one hundred ($100.00) dollars cash in hand paid by the party of the first part to the party of the second part, the option given by the party of the second part to the party of the first part, expiring on or about September 1st, 1919, is hereby amended so that the cash consideration for the purchase of the entire capital stock and assets of the Travis Glass Company, of Clarksburg, W. Virginia, is changed from five hundred thousand ($500,000) dollars to four hundred thousand ($400,000) dollars.

All other terms and conditions of said option, expiring on or about September 1st, 1919, are to remain in full force and effect.

Witness our hands this day and date above mentioned.

I. T. AXTON,
TRAVIS GLASS CO.,
H. E. TRAVIS, *Treas.*

Exhibit C.

COLUMBUS, OHIO, *May 24, 1919.*

This contract made the 24th day of May, 1919, by and between O. P. Lamb, J. W. Seidensticker, Wm. Seidensticker, Louis Seidensticker, Frank Roth, C. M. Tigner, Mary E. Tigner, L. E. Tigner, all of Columbus, Ohio, Watson Pickard, R. M. Lamb of Mt. Vernon, Ohio, parties of the first part, owners of entire stock of the Essex Glass Company of Ohio, and 252 shares of the 300 shares of the Essex Glass Company, Inc., of New York, parties of the first part, and I. T. Axton, of Louisville, Kentucky, party of the second part, witnesseth:

For and in consideration of $3,000.00, cash in hand paid, receipt of which is hereby acknowledged, parties of the first part hereby give party of the second part or his assigns option to purchase all of the stock owned by parties of the first part in both of the above-mentioned companies for the sum of $600,000 cash, or for $325,000 cash and $325,000 in bonds of company which may be formed; above bonds subject to 7% interest.

This option is to run ninety days from June 1st, 1919, and is subject to option given by parties of the first part to one J. P. Greer, Waterbury, Conn., May 5th, 1919.

It is agreed that the assets and liabilities of the Essex Glass Company of New York shall be liquidated when party of the second part directs in event he exercises this option, but that party of the second part will not participate in the assets of said company except the name, good will, contracts and all other intangible assets; neither shall he be liable for its liabilities.

During the life of this option, party of the second part, or parties he may select, shall have access to the books, plants, contracts,

and all other property both tangible and intangible of the above-mentioned companies to make such investigation as he may deem necessary.

No contracts will be cancelled by either company without consent of second party during the life of this option.

It is agreed that no appreciable change shall be made in the assets and liabilities of the above-mentioned companies during the life of this option.

In event party of the second part exercises this option the $3,000 above mentioned shall apply on the purchase price.

Witness our hands this day and date above mentioned.

WATSON PICKARD.
CHAS. M. TIGNER.
R. M. LAMB.
J. W. SEIDENSTICKER.
MARY E. TIGNER.
L. E. TIGNER.
FRANK ROTH.
LOUIS SEIDENSTICKER.
WM. SEIDENSTICKER.
O. P. LAMB.
I. T. AXTON.

By C. M. TIGNER, *Attorney in Fact.*

Exhibit D.

This agreement, made and executed in duplicate this thirtieth day of May, nineteen hundred and nineteen, by and between *Lockport Glass Company*, of Lockport, New York, party of the first part, and I. T. Axton, of the city of Louisville, Kentucky, party of the second part, witnesseth:

The said party of the first part, for and in consideration of the sum of one dollar ($1.00) to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to and with the party of the second part that it will sell and deliver to the party of the second part all of the capital stock of the company above mentioned upon the further payment of the sum of five hundred thousand dollars ($500,000) in cash, or, at the option of the said party of the second part, one hundred and fifty thousand dollars ($150,000) in cash, one hundred and fifty thousand dollars ($150,000) of seven per cent (7%) cumulative preferred stock, preferred both as to dividends and assets, in the event of dissolution or liquidation, or seven per cent (7%) bonds and three hundred thousand dollars ($300,000) of common stock of a company to be organized for the purpose of taking over this and other companies engaged in the milk bottle business, provided that the party of the second part shall elect to purchase all of said stock of said company and accept the terms of this agreement as herein set forth, *on or before September 1, 1919.*

In the event that said second party shall elect to accept the terms of this agreement, it is understood and agreed upon by the parties hereto that the said bonds above mentioned, in the event that bonds are issued, are to be secured by a first mortgage upon all of the assets of said proposed new corporation to be formed, and the total amount of bonds to be issued by said new corporation is not to exceed sixty per cent (60%) of the value of the assets transferred to the new corporation.

The party of the first part covenants and agrees that during the life of this option it will not intentionally or substantially depreciate the assets of said company, and, in the event that said second party elects to accept the terms of this agreement, that the assets of said company shall not be intentionally or substantially depreciated until such time as this agreement is fully performed.

It is mutually agreed and understood between the parties hereto that the said second party shall have the right, either in person or by a representative to be selected by him, to verify the value of the assets of said company by an appraisal and audit of the property, books of account, and records of the company, and that said first party will produce a financial statement showing the condition of its business as of June 1, 1919, certified to as to its correctness by the president and treasurer of said company, on or before June 15, 1919.

LOCKPORT GLASS COMPANY,
By J. M. WOODWARD, *Secretary.*
R. S. KEEP, *President.*
F. P. LUCE, *Treas.*

Exhibit E.

This agreement, made and entered into this 4th day of August, 1919, between Ralph S. Keep, personally and as agent for Geo. E. Greene, Fred P. Luce, personally and as agent and attorney for Walter H. Wright and J. M. Woodward, of the city of Lockport, N. Y., parties of the first part and I. T. Axton of the city of Louisville, Ky., party of the second part, witnesseth:

In consideration of the sum of five thousand dollars ($5,000.00), the receipt whereof is hereby acknowledged, the parties of the first part agree to sell to said second party, the number of shares of the capital stock of the Lockport Glass Company, set opposite their respective names, being in the aggregate 1662 shares of the common stock out of an entire issue of 1767 shares, and also agree to secure and deliver said remaining 105 shares of said common stock, for the sum of four hundred and twenty-five thousand dollars ($425,000.00); said first parties also agree to secure and deliver the outstanding 110 shares of the preferred stock of said Lockport Glass Company for eleven thousand five hundred and fifty dollars ($11,550.00) and accrued dividends. Said second party shall have until the first day of September, 1919, to complete and carry out this option, and thereafter the same shall be void. Said second party shall at the time the said option is exercised pay off and return the notes and bonds of said company given to secure the payment of borrowed money or make some other satisfactory arrangement whereby payment will be guaranteed to the satisfaction of the persons holding said securities.

The first parties agree not to do or suffer anything to be done between this date and the date of the carrying into effect of this option whereby the assets of said company will be diminished or its liabilities increased and its capital thereby impaired except transactions in the ordinary course of business; and also agree not to enter into large or extensive contracts for the manufacture and sale

of milk bottles at prices lower than those standard and prevailing in the milk-bottle trade.

Sale and delivery of the stock and payment of the purchase price shall be made at the office of the company at Lockport, N. Y., and the consideration hereof, namely, $5,000.00, applied on the purchase price. In case this option shall not be carried out then said consideration shall be forfeited.

This agreement supersedes and takes the place of another agreement made and entered into with said I. T. Axton under date of May 30, 1919.

Witness the hands of the parties hereto the day and year first above written.

Ralph S. Keep	688	shares.
George E. Greene by R. S. Keep	532	"
F. P. Luce	170	"
W. H. Wright by F. P. Luce	100	"
J. M. Woodward	172	"
I. T. Axton	1,662	"

STATE OF NEW YORK,
County of Niagara, ss:

On this 4th day of August, 1919, before me the subscriber, personally appeared, Ralph S. Keep, personally and as agent for Geo. E. Greene, Fred P. Luce, personally and as agent and attorney for Walter H. Wright, J. M. Woodward and I. T. Axton, to me known and known by me to be the same persons described in and who executed the foregoing instrument and duly acknowledged that they severally executed the same.

G. C. LEWIS,
Notary Public.

Exhibit F.

Certificate of Incorporation of Sterling Glass Company, Inc.

We, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to form a stock corporation, pursuant to the provisions of the business corporations law of the State of New York, do hereby make, sign, acknowledge, and file this certificate for that purpose, as follows:

First. The name of the proposed corporation is Sterling Glass Company, Inc.

Second. The purposes for which it is to be formed are: To manufacture glass and glassware of any and all kinds and descriptions; to manufacture such machinery and appliances as are or might be useful in connection with the preparation of glassware; to produce, as opportunity offers, whatever crude materials are necessary for the manufacture of glass; to buy such lands and erect such buildings as are needed for the purpose of carrying on the business of the corporation, to sell and dispose of the same as authorized by law; to buy, own, and sell the plant or plants of other companies heretofore carrying on a similar business; to buy, own, hold, sell, exchange,

underwrite, pledge, and deal in stocks, bonds, mortgages, trust receipts, debentures, and other securities of corporations, both domestic and foreign, engaged in a similar business; to apply for, obtain, purchase or otherwise acquire, and to register, hold, own, use, sell, or otherwise dispose of any and all trade-marks, trade names, processes, formulæ, trade secrets, inventions and devices of all kinds, whether secured under letters-patent of the United States or of any foreign country; and to prepare, manufacture, buy, sell, import, export, and generally deal in and with glass and glassware and whatever crude materials are necessary for the manufacture thereof.

Third. The amount of the capital stock is six hundred thousand dollars ($600,000).

Fourth. The number of shares of which the capital stock shall consist is six thousand (6,000) of the par value of one hundred dollars ($100) each, and the amount of capital with which said corporation will begin business is six hundred dollars ($600).

Fifth. Its principal business office is to be located in the city of Elmira, in the county of Chemung and State of New York.

Sixth. Its duration is to be perpetual.

Seventh. The number of its directors is to be four.

Eighth. The names and post-office addresses of the directors for the first year are as follows:

Names.	Post-office addresses.
Hubert C. Mandeville	Elmira, N. Y.
Leo Waxman	Elmira, N. Y.
Ely W. Personius	Elmira, N. Y.
William P. Rodgers	Elmira, N. Y.

Ninth. The names and post-office addresses of the subscribers to this certificate and a statement of the number of shares of stock which each agrees to take in the corporation are as follows:

Names.	Post-office address.	Number of shares.
Hubert C. Mandeville	Elmira, N. Y.	2
Leo Waxman	Elmira, N. Y.	2
Ely W. Personius	Elmira, N. Y.	2
William P. Rodgers	Elmira, N. Y.	2

In witness whereof, we have made, signed, acknowledged, and filed this certificate in duplicate.

Dated this 23d day of August, 1919.

HUBERT C. MANDEVILLE.
LEO WAXMAN.
ELY W. PERSONIUS.
WILLIAM P. RODGERS.

STATE OF NEW YORK,
County of Chemung, ss:

On this 23d day of August, 1919, before me personally came Hubert C. Mandeville, Leo Waxman, Ely W. Personius, and William P. Rodgers, to me known and known to me to be the persons described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.

JOSEPH W. BUCK,
Notary Public.

Exhibit G.

Agreement made this 28th day of August, 1919, between Francis E. Baldwin, of the first part; William Ford, of the second part; Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., hereinafter called "Sterling Company," of the fourth part, witnesseth:

Whereas Baldwin, Ford, and Libbey are each making certain notes to the Guaranty Trust Company, as follows:

Baldwin is making a note for six hundred fifty thousand dollars ($650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said companies:

Libbey is making a note of four hundred eighty thousand dollars ($480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and

Ford is making a note for four hundred eighty thousand dollars ($480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with eighty-nine thousand dollars ($89,000) par value of bonds and one hundred seventeen thousand dollars ($117,000) of notes of said company; all of said notes being given on demand and amounting in all to one million six hundred ten thousand dollars ($1,610,000); and

Whereas the Sterling Company is a corporation organized under the laws of the State of New York, with an authorized capital stock of six hundred thousand dollars ($600,000) of which five hundred thousand dollars ($500,000) has been paid in in cash, and Libbey and Baldwin have each contributed one-half (½) of said capital stock; and

Whereas Libbey, Baldwin, and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

Whereas it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others; and

Whereas Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called "Hartford-Fairmont" patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

Whereas it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the company and the details in respect thereto, Ford and Libbey may

retire from Sterling Company and from this transaction, at their option, and shall in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the two hundred fifty thousand dollars ($250,000) or other amounts contributed to the capital stock of Sterling Company; and

Whereas Sterling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of one dollar ($1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

First. That Sterling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and upon the payment of the said note all of the collateral thereto shall become the property of Sterling Company.

Second. That until the formation of the permanent company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

Third. That if the so-called "Hartford-Fairmont" patents, or control thereof, shall not be acquired by Libbey within six months of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization, or organization of the permanent company hereintobefore referred to, Libbey may at any time upon service of ten (10) days' written notice upon Baldwin retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the two hundred fifty thousand dollars ($250,000) aforesaid, invested by Libbey in the capital stock of Sterling Company, and all other amounts which Libbey may have so invested or advanced to Sterling Company, with interest on each such investment and advance from the date thereof at the rate of six per cent (6%) per annum.

Fourth. Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Sterling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

Fifth. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the first, second, and third parties, and the successors and assigns of the fourth party.

Sixth. This agreement supersedes and terminates an agreement made between Baldwin, Ford, and Sterling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, secretary.

In witness whereof, the parties have set their hands the day and year first above written.

F. E. BALDWIN.
E. D. LIBBEY.
WILLIAM FORD.
STERLING GLASS COMPANY, INC.,
By H. C. MANDEVILLE, *President.*

Exhibit H.

SEPTEMBER 2, 1919.

Mr. F. E. BALDWIN,
Elmira, N. Y.

Re *Sterling Glass Company, Inc., and associate companies.*

MY DEAR MR. BALDWIN: While the happenings of August 28th and 29th are fresh in my mind, I am writing you this letter for our mutual records and am sending a copy to Mr. Libbey for his records.

Herewith I hand you the minute book of the Sterling Glass Company, Inc., showing the articles of incorporation, by-laws and minutes to date, including the minutes of the meeting held to-day rectifying and confirming all that has been done to date.

I am about to issue the stock; $250,000.00 is to be issued as you may nominate. Please give me the names of the stockholders and the name of two persons to be directors. The present directors are Mr. Personius, Mr. Waxman, Mr. Rodgers, and myself. The present officers are myself, president; Personius, vice president; Waxman, secretary; and Rodgers, treasurer. Please let me know your views as to the permanent officers. The present officers and directors will remain until you are ready to have permanent directors and officers installed.

In the minute book you will find copies or originals of all contracts that have been executed to date to which the Sterling Glass Company, Inc., is a party.

With the minute book you will find the deposit slips, check book and bank book of the Sterling Glass Company, Inc., with the Guaranty Trust Company. I think they should be kept in your office and that your Mr. Collins should make some bookkeeping record to avoid confusion in the future.

With the minute book you will find the deposit slip, check book, drawing checks, etc., to be sent Mr. Hatcher, of the Guaranty Trust Company, together with a full set of Ernst & Ernst reports on the various companies which you have.

You should receive from Mr. Axton copies of the notes dated August 29, 1919, signed by Stirling Glass Company, Inc., and yourself, for $50,000.00 and $57,000.00, respectively.

With the minute book I enclose a folder containing all the statements as to resources, earnings, etc., and all other papers that have come into my possession. I am doing this to have your files complete. When the seal and stock books are received I shall send them to Mr. Collins to be kept with these papers.

You should receive from the Guaranty Trust Company a letter giving you the dates and amounts of all the checks drawn by it against the deposit to the credit of the above company. My figures show that I deposited $500,000.00 and the proceeds of the notes amounted to $1,610,000.00. The amounts of the notes and the collateral to each are set out in the contract between Mr. Ford, yourself, and the Sterling Glass Company, Inc., dated August 28th, which contract was approved, in your behalf, by Mr. Wilcox. This made a total deposit of $2,110,000.00. All the above notes were made on demand and are shortly to be renewed by six months notes with one renewal. The notes were with interest and were dated August 28th.

My record of the check is—that the check given the Woodbury plant was $434,600.00; Travis plant $400,000.00; Essex plant $600,000.00; Lockport plant, including bonds and notes (of which a list is contained in the letter of Lockport Glass Company of August 23, 1919, which is included among the papers handed you) $639,814.49. This makes a total of checks drawn $2,074,414.49. These figures are to be confirmed and are subject to correction by the letter to be received from the Trust Company. It was hard to get the figures accurately under the circumstances. This should leave $35,585.51 balance in the Trust Company.

Before the disbursement of money began the amounts to be paid out were: Essex $600,000.00; Travis $400,000.00; Lockport $436,500.00, plus the bonds, $89,000.00 and notes $117,000.00; Woodbury $600,000.00; Axton $50,000.00.

The letter from the Trust Company will give the amounts of the final computations which were made by the Trust Company. We were neither of us in the directors' room at the final closing, when the interest was computed and the amount of notes, etc., determined, so I can not give the accurate figures, but they will appear in the letter.

There is $8,400.00 yet to be paid out for some stock that is to come in with a draft attached. A $24,000.00 commission to the Guaranty Trust Company is yet to be billed by them and paid. There were some corrections for moneys that had already been paid on options which will appear in the letter. Axton took as a part of the price of his stock two notes, one of $50,000.00 and the other $57,000.00, which notes were signed by Sterling Glass Company, Inc., and by Mr. F. E. Baldwin, copies of the notes to be sent by Axton.

The resignations of all the officers and directors of the various companies were taken, to be exercised at your option. As you visit each plant, please advise the Trust Company whom you wish as your board of directors, where the stock should be transferred and by whom, and the Trust Company will send the stock on for transfer accordingly. All except qualifying shares will be transferred to a nominee of the Trust Company. The accounting methods of each plant should be put upon the same basis as the Thatcher Mfg. Company as soon as convenient.

As soon as we have some figures I should like to take up the question of a permanent organization to include the Thatcher Mfg. Company, with Mr. Libbey, Mr. Ford, and yourself, and make up a suggested plan which we will then submit the Guaranty Trust Company and possibly Campbell, Heath & Company, so as to have two parties bidding. I called on Mr. Pepper and Mr. Campbell, of this firm, and they feel that they are entitled to a chance because of the time they spent with Mr. Axton and the fact that they had the money ready for him; but he could not bring his parties to the terms offered. I think we should have this new company all ready by the Easter dividend period so that we can put the new preferred stock on the market at that time and realize enough to clean up all the above indebtedness.

The resignations above mentioned are to remain with the Guaranty Trust Company, as do all the stock, bonds, and notes, all of which will be described in the letter and are totalled in the contract between Baldwin, Ford, and Sterling Glass Company, Inc., of the 28th of August, 1919.

The Sterling Glass Company, Inc., has a contract with Mr. Axton by which, in consideration of the services he has rendered in getting the options and of services to be rendered as called upon by the Sterling Glass Company, Inc., he is to be paid $100,000.00, February 1, 1920, without interest. The Thatcher Mfg. Co., by F. E. Baldwin, treasurer, guarantees the faithful performance of the contract and the payment of this money.

The Thatcher Mfg. Co., for $15,000.00 already paid, promises to pay $85,000.00 more on or before the 1st of July, 1920, without interest. In consideration of this all the Hamilton stockholders agree to keep out of the milk-bottle business, except in Allegheny County, Pennsylvania, for a period of ten years from January 1, 1920. For $10,000.00, to be paid January 1, 1920, they are to sell and deliver the Hartford-Fairmont feeder machine and licenses. The Thatcher Manufacturing Company made this agreement, and the transfer and agreement runs to it.

Attached hereto is a letter from the Knowles-Main appraisal bureau, dated the 30th of August, 1919, regarding their proposition to appraise the Thatcher Manufacturing Company, also a letter from Mr. Axton, August 29, 1919, asking for a check of $4,333.33 for option money advanced by him. I have written both that I have referred the letters to you.

Originals of all the above contracts are handed you herewith.

Very truly yours,

(Signed) H. C. MANDEVILLE.

Exhibit 1.

TOLEDO, OHIO, *December 11, 1919.*

To Mr. FRANCIS E. BALDWIN,
Thatcher Manufacturing Company, Elmira, N. Y.

In accordance with the terms of a contract, entered into August 28, 1919, between F. E. Baldwin, of the first part, William Ford, of the second part, and Edward D. Libbey, of the third part, and the Sterling Glass Company, Incorporated, I hereby desire to notify

you that, as the plan of reorganization of the companies purchased under this agreement does not meet with my approval, I wish to retire from this agreement.

In accordance with the above notice, I shall expect to be released from further liability under the notes covered by this agreement, which were given to the Guaranty Trust Company of New York.

(Signed) WILLIAM FORD.

Exhibit J.

EDWARD DRUMMOND LIBBEY,
Toledo, Ohio, December 11th, 1919.

To FRANCIS E. BALDWIN,
Thatcher Manufacturing Company, Elmira, N. Y.

In accordance with the terms of a contract, entered into August 28, 1919, between F. E. Baldwin, of the first part, William Ford, of the second part, and Edward D. Libbey, of the third part, and the Sterling Glass Company, Incorporated, I hereby notify you that, as the plan of reorganization of the companies purchased under this agreement does not meet with my approval, I desire to retire from this agreement.

In accordance with the above notice, I shall expect to be released from further liability under the notes covered by this agreement, which were given to the Guaranty Trust Company of New York, and shall expect to be reimbursed for the sum of two hundred and fifty thousand dollars ($250,000) advanced for the capital stock of the said Sterling Glass Company, Incorporated; all to be accomplished not later than April 12, 1920.

(Signed) E. D. LIBBEY.

Exhibit K.

ANNUAL REPORT TO DIRECTORS AND STOCKHOLDERS OF THATCHER MANUFACTURING COMPANY.

This has been the most eventful year in the history of Thatcher Manufacturing Company. The winter of 1917 and 1918 was a very mild winter throughout the entire country. There were no bottles broken by freezing or lost in the snow. Prior to the signing of the armistice all milkmen had in large stocks, providing against increase in price and also the shortage in winter shipments which had affected them seriously the winter before.

The armistice was signed in November. We had in shipping instructions so that our sales kept up until the first of January, but the orders and shipping instructions fell off after the armistice, and the first six months business of 1919 was about $150,000 less than for the same period in 1918.

To analyze the business in different sections shows rather strange results; for example, the business in Philadelphia territory increased

$30,000; our business for the New York City territory and New England territory combined broke even, one of them increasing about $3,000 and the other lost about $3,000. Our sales around through the East show a slight increase. Our great shrinkage was in the West and principally in Chicago. I know, however, that our shrinkage was not as much in comparison as the shrinkage of our competitors, still as a rule the price of milk bottles was maintained by our competitors and strictly maintained by us, because there has been a gradual increase in the cost of materials and labor.

During the last six months of 1919 we have been badly crowded with orders, and our sales for the year's period were only about $50,000 less than for the year 1918.

During the present winter we are having more trouble to keep our factories in operation than we had during the war period, and never was in a worse condition than we are at the present time. If it had not been for coal strikes we would have manufactured more bottles this year and sold more than the year 1918. While we did not manufacture quite so many gross, we did manufacture a larger percentage of quart bottles, and therefore packed more pounds of metal. The cost per pound at Kane, where we decreased very materially was in 1919 period $.022741; in the 1918 period $.021784, a slight increase. In Streator, where we increased the production, the cost per pound was $.022555 in 1919 against $.025417 in 1918. In Elmira, where we increased our production very materially, our cost per pound in 1919 was $.019071 against $.028096, a much larger decrease. We were only able to operate two (2) furnaces because of lack of coal at the Elmira plant.

Our net earnings for the year 1919, after all deductions for depreciation, interest, Federal income and profit taxes, are $236,838.58, as against $158,930.78 for 1918. We paid out in dividends during the year $100,147, leaving to be carried over as net addition to undivided profits $136,687.58. Our net earnings for the first six months period of 1919 was $69,415.51. Our net earnings for the last six months period was $165,419.07. If it had not been for the coal strike and trouble with getting material, our net earnings for the last period would have been much larger.

The ratio of the current assets to the current liabilities on December 31, 1919, was $2.16 to $1.00. The auditors said it would have been much larger if it had not been for extra dividends to stockholders and redemption of bond No. 169.

There are now outstanding at the present time of our bonds $149,000. One $500.00 bond has been purchased since the first of January. We have reserved for depreciation $715,811.78 and we have surplus and undivided profits of $763,304.69. We own $260,000 of Liberty and Victory bonds; $160,000 of these bonds have been paid for, and a $100,000 note repreesnts the purchase of the last $100,000. Our appraisal value of property with depreciation deducted, and not taking into consideration good will or the value of our contracts and license, or in other words, tangible assets, makes our common stock at the close of business December 31st worth $222 per share.

We invested from our earnings $150,000 in the stock of the Sterling Glass Company, and have a note outstanding for $100,000 for the balance of our investment of $250,000 in that company. If we had not made that investment in stock there would be no notes out

against our company. Our notes at the present time amount to $230,000; $100,000 for "Victory" bonds and $100,000 for the balance due for the purchasing of $250,000 of Sterling Glass Company stock and $30,000 that we issued in advance money to different companies that we purchased.

At the time of the report we had advanced to the Travis Glass Company, the Woodbury Glass Company, and the Sterling Glass Company $103,249.60. We received from the Essex Glass $75,000, leaving a balance of $28,249.60. We made a further advance January 2nd of $100,000 to the Sterling Glass Company.

I simply mention these figures to show that Thatcher Manufacturing Company was in a very comfortable position financially and every other way.

During the year, starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmount feeder and milk-bottle machine and milk-bottle business of the J. T. and A. Hamilton Company. These parties, except the Woodbury Glass Company, held the exclusive licenses for the Hartford-Fairmount feeder and machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmount feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmount feeder and machines and milk-bottle business of the J. T. and A. Hamilton Company.

The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company and Mr. William Ford, a large stockholder in the Owens Company.

We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and same is being now managed and directed by Thatcher Manufacturing Company.

The opportunity to purchase these plants, I can not help but feel was providential. It puts us in the forefront, as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmount machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines.

We are increasing our organization and perfecting it, and while it will be some time before it is whipped into satisfactory shape, it seems to us that it is being worked out quite satisfactorily indeed.

In the negotiations for the purchase and the purchasing and the arranging for the financing of the company, Mr. H. C. Mandeville has given a very large portion of his time and has been of very great assistance and value. While the matter of the financing has not been definitely settled, we believe that it will be in a very short time now.

Personally, I wish to express very great satisfaction for the fact that Mr. Mandeville is to be with us as a part and parcel of Thatcher Manufacturing Company. I recommend that our by-laws be changed

and that we have two vice presidents, Mr. Mandeville to be elected as one of the vice presidents.

During the year 1919 the organization of Thatcher Manufacturing Company has worked together in perfect harmony for which I wish to express my appreciation and also wish to express my appreciation which has more meaning than mere words can convey, for the assistance and sympathy and cooperation of the entire board of directors.

Everything indicates that Thatcher Manufacturing Company will develop into one of the very large bottle manufacturing companies in the country.

I recommend that a 3% dividend be declared upon our common stock, payable April 1st.

Respectfully submitted.

February 18, 1920. (Sgd.) F. E. BALDWIN,
President.

Exhibit L.

Agreement entered into this 10th day of April, 1920, between Francis E. Baldwin (hereinafter called the "seller"), party of the first part, and Hemphill, Noyes & Co., a copartnership doing business in the borough of Manhattan, city of New York, and Bonbright & Company, Incorporated, a corporation organized and existing under and pursuant to the laws of the State of New York (hereinafter called the "buyers"), parties of the second part.

Whereas the seller represents a control of a least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Company, a corporation of the State of New York (hereinafter referred to as the "corporation"), for the purpose of carrying out the plan hereinafter set forth and entering into this agreement; and

Whereas the plan is as follows:

I.

The seller proposes to cause the corporation to increase its common stock (hereinafter called the "existing common stock"), which now consists of ten thousand shares of the par value of one hundred dollars each, to sixteen thousand two hundred and fifty shares of the par value of one hundred dollars each, and to cause said additional six thousand two hundred and fifty shares to be purchased from the corporation for cash at par; and immediately thereafter to cause the corporation to alter and amend its certificate of incorporation in accordance with the laws of the State of New York so that the corporation will have an authorized capital stock, consisting of twenty-five thousand shares of eight per cent cumulative preferred stock of the par value of one hundred dollars each (provided that the authorized amount of preferred stock shall consist of thirty thousand shares if the value of the assets of the corporation as finally approved by the buyers, will justify such increase under the provisions of the stock corporation law of the State of New York), and one hundred and thirty thousand shares of common stock without nominal or par value in place and stead of the present authorized and issued capital stock

of the corporation as increased as above provided, which will, immediately prior to said reorganization, consist of two thousand five hundred shares of preferred stock of the par value of one hundred dollars each (hereinafter referred to as the "existing preferred stock"), and sixteen thousand two hundred and fifty shares of common stock of the par value of one hundred dollars each.

II.

The new preferred stock to be authorized as hereinbefore provided (hereinafter referred to as the "preferred stock") will be subject to the following preferences and provisions:

(A) The preferred stock shall bear cumulative dividends from the date of the filing of its certificate of reorganization, at the rate of eight per cent per annum, payable quarterly;

(B) If at any time for a period of thirty days, the corporation shall not have issued and oustanding any bonds, notes, or other corporate evidences of indebtedness maturing more than one year from the date thereof, then and in such event and on or before the first day of the next succeeding month of April, and on or before the first day of April in each and every year thereafter (until all the preferred stock shall have been redeemed) there shall be set apart and credited to a sinking-fund account an amount equal at least to 15% of the net profits of the corporation arising from the earnings of the business of the corporation for the respective preceeding twelve months' periods ending on the thirty-first day of December, as such net profit (after allowance for maintenance and depreciation) shall be set forth or stated in the books of account of the corporation, after first deducting therefrom an amount equivalent to eight per cent of the par value of the preferred stock outstanding on such thirty-first day of December. The amount so determined shall be set aside on the first day of April in each such year from and only from the surplus profits arising from the business of the corporation remaining after full cumulative dividends on the preferred stock outstanding shall have been declared and paid or provided for, including all dividends accrued or in arrears, and this obligation shall be cumulative, so that if, in any year or years, said remaining surplus profits shall be insufficient to permit the whole amount required as aforesaid to be set aside, or if, for any reason, such full amount shall not be set aside, the deficiency shall be made good out of the surplus profits of the succeeding year or years before any dividends shall be declared or paid upon or set apart for the common stock.

All moneys required to be set aside pursuant to the provisions of this clause on the first day of April in any year shall be applied as soon as practicable, but within six months from the date on which they shall have been set aside, to the purchase of preferred stock at public or private sale, if obtainable, at not exceeding the redemption price hereinafter fixed. If and to the extent that such moneys are not so applied, they shall be applied to the redemption of preferred stock as hereinafter provided, on the earliest date permitted by this certificate and by any regulations or restrictions of the New York Stock Exchange upon the right of redemption which may be incorporated in the by-laws of the corporation, and until the call for such redemp-

tion said amounts shall be applied to further purchases of the outstanding preferred stock, if and to the extent that the same can then be purchased as aforesaid at not exceeding the redemption price. The amounts set aside for the purpose of this clause shall not be made the basis of a stock or cash dividend or otherwise distributed among the holders of the common stock, nor shall said amounts be depleted or used in any other way which would interfere with the application thereof as herein required.

Preferred stock redeemed or purchased under any provision of this clause shall not be reissued, and no preferred stock shall be issued in lieu thereof or in exchange therefor, and surplus profits used as a basis for the purchase or redemption, or growing out of the purchase, redemption or resulting reduction of preferred stock, shall, so long as any of the preferred stock shall be outstanding, be deemed to be capitalized and shall be unavailable as a basis for dividends payable otherwise than in common stock, or for other charges against surplus.

If in any year the corporation shall have set aside and applied as aforesaid out of such remaining surplus profits amounts in excess or in advance of the above requirements, the corporation shall be entitled to be credited with the amount of such excess on its obligations to set aside moneys as aforesaid in subsequent years.

For the purpose of determining and computing any amount required to be set apart for and credited to the sinking-fund account in respect of any particular period, as in this clause provided, there shall be added to the surplus profits arising from the business of the corporation for such period that proportion of the surplus profits for such period of any company a majority of whose capital stock shall be owned by the corporation (herein called "Subsidiary company") that the stock of such subsidiary company so owned shall bear to the total amount of stock of such subsidiary company outstanding. Should any amount required to be set apart for and credited to the sinking fund account on the basis of any such computation be in excess of the surplus profits of the corporation available therefor, then and in such event the corporation shall cause the subsidiary company or companies forthwith to declare and pay dividends out of its or their respective surplus profits sufficient to enable the corporation, through its stock ownership in such subsidiary company or companies, to provide for any such excess. Until the corporation shall have caused dividends to be paid in amounts sufficient to provide for any such excess, as hereinbefore provided, it shall not declare or pay any dividends upon its common stock.

(C) The preferred stock shall be redeemable at the option of the corporation upon such terms and conditions and at such price as the buyers may determine, but not in excess of 115% of the par value thereof and accrued dividends thereon, and shall be preferred as to principal upon voluntary dissolution or liquidation at the redemption price above provided, and in the event of insolvency or involuntary dissolution, at one hundred dollars per share and accrued dividends.

(D) Dividends shall not be paid upon the common stock of the corporation unless and until the corporation shall have paid all accrued dividends upon the preferred stock and shall have declared and paid or provided for the current quarterly dividend, and shall

have complied with the above clause (B) in respect of any and all amounts then or theretofore required to be set aside or applied. Subject to the foregoing provisions and not otherwise, such dividends as may be determined by the board of directors may be declared and paid on the common stock from time to time out of the remaining surplus profits arising from the business of the corporation.

(E) No holder of stock of the corporation of any class shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of the preferred stock or securities convertible into preferred stock, whether now or hereafter authorized, and whether issued for cash, property, or services; and no holder of the preferred stock shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock or securities convertible into stock of any class whatever, whether now or hereafter authorized, and whether issued for cash, property, or services.

It shall be provided in the certificate of reorganization that no amendment of the provisions thereof in respect of the rights and preferences of the preferred stock, as hereinbefore set forth, as between the said preferred stock and the common stock, shall be made.

III.

It shall be provided in the certificate of reorganization that there shall be issued to the holders of the certificates of the existing preferred stock of the corporatioin then outstanding, in place thereof, shares of the preferred stock, share for share, and that seventy-one thousand five hundred shares of the common stock without nominal or par value (hereinafter referred to as the "common stock") shall be issued to the holders of the certificates for the said sixteen thousand two hundred and fifty shares of the existing common stock of the corporation, in place thereof, in the proportion of four and four-tenths shares of the common stock for one share of the existing common stock.

IV.

Either before or at the time of the reorganization of the corporation as hereinbefore provided, the corporation shall acquire all of the assets and business of the following companies, to wit, Travis Glass Company, Essex Glass Company, and Lockport Glass Company, all of the shares of stock of said companies being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation; and at the same time the corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Sterling Glass Company.

As a condition of such acquisition, the corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved.

V.

Immediately upon the filing of the certificate of reorganization of the corporation as provided by law, the seller shall cause the corporation to authorize, make, and execute an issue of two million dol-

lars principal amount of its corporate bonds (hereinafter called the "bonds"). The said issue of bonds shall be limited to two million dollars principal amount thereof; shall mature ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semiannually; and the principal and interest thereof shall be payable without deduction for any tax or taxes or other governmental charge (except succession or inheritance taxes, State income taxes, and such portion of Federal income taxes as shall be in excess of two per cent), which the corporation, its successors, or assigns, or any officer or fiscal agent thereof, or the trustee or trustees under the indenture providing for the issue thereof, may be required or permitted to pay thereon or to retain or to deduct therefrom, under any present or future law of the United States of America, or of any State, county, municipality, or other taxing authority therein, whether such income tax be considered a personal tax on the holders of the bonds or otherwise, all of which taxes, except as aforesaid, the corporation will covenant and agree to pay.

The bonds shall be callable in whole or in part on any interest date at least 120% of the principal amount thereof and accrued interest for the first two years from the date thereof, and thereafter at the rate of 105% of the principal amount thereof and accrued interest; provided that if the stock corporation law of the State of New York shall be amended prior to the filing of the certificate of reorganization, as in this agreement provided, so that bonds of corporations may be converted into stock during the two years immediately following the date thereof, then and in such event the bonds shall be callable at the rate of 105% of the principal amount thereof and accrued interest for the first two years from the date thereof, instead of at the rate of 120% of the principal amount thereof and accrued interest as above provided.

The bonds shall be issued under the provisions of an indenture to be made to a trustee or trustees to be selected by the buyers (hereinafter called the "trustee"), and shall contain such provisions and be in such form as the buyers shall determine.

The indenture shall contain a sinking fund under the provisions of which the corporation shall pay to the trustee thereunder the sum of fifty thousand dollars at the expiration of the first year after the date of the indenture and one hundred thousand dollars at the expiration of each year thereafter up to and including the sixth year after the date of the indenture, and one hundred and fifty thousand dollars at the expiration of each year thereafter up to and including the ninth year after the date of the indenture; provided that if, at the time when any of the aforesaid sinking-fund payments shall become due and payable, 15% of the net earnings of the corporation for the preceding twelve months shall be in excess of the sinking-fund payment then due and payable as above provided, the corporation shall thereupon pay to the trustee under the indenture a sum equivalent to such 15% of the net earnings of the Corporation in lieu of the fixed sum to be paid as above provided. For the purpose of computing the aforesaid payments, there shall be deducted from the net earnings of the corporation all interest charges and taxes.

The payment to be made by the corporation to the sinking fund at the expiration of any year as above provided, shall be reduced by an amount equivalent to the principal amount of any of the bonds which may be converted during such year into the preferred stock or the common stock of the corporation, as hereinafter provided.

The trustee under the indenture shall apply the sinking fund as rapidly as shall be reasonably practicable to the purchase of bonds at the lowest price obtainable, not exceeding 105% of the principal amount thereof and accrued interest, and for such purpose may acquire bonds from the corporation at the cost price thereof to the corporation with accrued interest thereon, or in the market at public or private sale, or may, and if so requested by the corporation shall, call for offers of said bonds by advertising as directed by the corporation or as the trustee may deem best. If the trustee shall be unable, after the expiration of two years from the date of the indenture, in the manner aforesaid, to purchase sufficient bonds to exhaust the sums at any time available as aforesaid for the sinking fund, then it shall proceed immediately to select by lot, in any usual manner in its uncontrolled discretion, so many of said bonds then outstanding as the said sinking fund will suffice to purchase on the next interest day at 105% of the principal amount thereof and accrued interest, and shall give notice by publication in a daily newspaper published and in general circulation in the city of New York for four successive weeks that the bonds so selected will be purchased for the sinking fund, such notice to specify the serial numbers and the denominations of the bonds to be so purchased, and the date of such proposed purchase, which shall be an interest payment date; and on and after the interest date so specified for their purchase, the trustee shall pay to the respective holders thereof 105% of the principal amount thereof and accrued interest to such date of purchase. All bonds acquired by the trustee for the sinking fund shall be cancelled and thereupon surrendered to the corporation.

The bonds, after the expiration of two years from the date thereof, shall be convertible at any time at the option of the holders thereof, par for par, into the preferred stock of the corporation, or, after the expiration of two years from the date thereof and at any time during the following four years, shall be convertible at the option of the holders thereof, into common stock of the corporation (instead of into preferred stock as above provided) at the rate of twenty-five shares of common stock for one bond of the principal amount of one thousand dollars, and at any time after six years from the date thereof and at any time during the following four years, shall be convertible, at the option of the holders thereof, into common stock of the corporation (instead of into preferred stock as above provided) at the rate of twenty shares of common stock for one bond of the principal amount of one thousand dollars; provided, however, that, if the bonds shall be made callable at 105% of the principal amount thereof and accrued interest instead of at 120% of the principal amount thereof and accrued interest during the first two years from the date thereof, as hereinbefore in this article provided, then and in such event the bonds shall be convertible at any time during the period of five years from the date thereof, at the option of the holders thereof, either into preferred stock of the

corporation, par for par, or into common stock of the corporation at the rate of twenty-five shares of common stock for one bond of the principal amount of one thousand dollars, and at any time during the following period of five years, at the option of the holders thereof, either into preferred stock of the corporation, par for par, or into common stock of the corporation at the rate of twenty shares of common stock for one bond of the principal amount of one thousand dollars.

The indenture shall contain a provision to the effect that, without the written consent of the holders of at least a majority of the outstanding bonds, the corporation shall not create or issue any shares of stock having preference or priority over or on a parity with the authorized preferred stock, or increase the authorized preferred stock, or increase the authorized common stock.

Should the buyers notify the seller that they will purchase the securities of the corporation as hereinafter provided, and should the buyers, contemporaneously therewith, notify the seller that it is their desire to have the bonds secured by mortgage on the property of the corporation and the properties of the Travis Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the seller shall cause the corporation to execute a mortgage on all of its property and that of the said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of the principal and interest of the bonds; provided that, until there shall be a default in respect of the payment of the principal or interest of the bonds, or any of the covenants contained in such mortgage, the corporation shall be permitted to pledge its inventories, its accounts receivable, and all bills and notes which may be owned by it from time to time as security for any indebtedness which it may incur in the ordinary transaction of its business.

Should the buyers determine that the bonds shall be secured by mortgage as aforesaid, the bonds shall be issued subject to the provisions of such mortgage in lieu of the indenture above referred to, which mortgage shall contain the sinking-fund clause, the conversion clause, and all the other covenants and provisions in respect of the said indenture as above set forth, and shall be in form satisfactory to the buyers and shall contain such necessary and customary provisions for the protection of the bonds as the buyers shall determine, and such mortgage shall be made to a trustee or trustees to be designated by the buyers.

The mortgage shall be a first lien on all of the aforesaid property, subject only to the lien of the mortgage now outstanding of $149,500 on certain property now owned by the corporation.

Now, therefore, in consideration of the premises and the mutual covenants herein contained, and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

First. The seller agrees that the following representations constitute a part of this agreement and are the basis upon which the sale hereinafter provided for is to be made:

A. That an appraisal of the real estate, buildings, factory, machinery and equipment, tools, patterns and dies, designs and drawings, and furniture and fixtures of the corporation, the Travis Glass Company, the Essex Glass Company, and the Lockport Glass Company as of December 31, 1919, will show a valuation thereof of not less than $3,448,462.94;

B. That the consolidated balance sheet of the corporation as of December 31, 1919, made by Squires & Greenman, is substantially correct;

C. That the corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumbrances, with the exception of the lien of the aforesaid mortgage of $149,500 on a portion of the property of the corporation;

D. That the business of the corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that the prospects for continued profitable business are good.

Second. The seller agrees that the corporation shall not declare or pay any dividend or dividends on its existing preferred or common stock, or pay any salaries in excess of its existing salaries, or incur any indebtedness, other than in the usual course and conduct of its business, until the purchase by the buyers of the securities of the corporation as hereinbefore provided, or until the termination of this agreement.

Third. The buyers shall have the period of six weeks from the date hereof to conduct an examination of the business, property, and affairs of the corporation and its said subsidiary companies by its counsel, auditors, accountants, engineers, and other agents, and the buyers agree to proceed with the same forthwith, and the seller agrees to facilitate and cause the corporation to facilitate such examination in every way.

Should the buyers at any time before the expiration of said period of six weeks, determine that their said examinations and investigations are satisfactory to them, and that the market conditions will then warrant the acquisition by them of the securities of the corporation as hereinafter set forth, then and in such event the buyers shall notify the seller in writing that they will purchase from the corporation the bonds and common stock of the corporation as hereinafter set forth, and thereupon the seller shall forthwith carry into effect and consummate the foregoing plan for the amendment and alteration of the certificate of incorporation of the corporation, and shall cause the existing preferred and common stockholders of the corporation to exchange their stock for the new preferred and common stock of the corporation as in said plan set forth; and shall also cause the corporation to make and execute its bonds in the sum of two million dollars, either issued under the aforesaid indenture or issued under and secured by the aforesaid mortgage, as the buyers shall determine, at the earliest possible moment; and shall also forthwith cause the corporation to enter into an agreement with the buyers, whereby the corporation shall agree to sell to the buyers and the buyers shall agree to purchase from the corporation the said two million dollars principal amount

of bonds, for the sum of one million seven hundred and thirty-one thousand five hundred dollars in cash together with accrued interest thereon, and eight thousand five hundred shares of its common stock without nominal or par value, at the rate of one dollar per share.

The delivery of said bonds and stock shall be made to the buyers upon the expiration of two weeks following the filing of the certificate of reorganization of the corporation as above set forth, provided, however, that if the bankers shall require the bonds to be secured by a mortgage as hereinbefore set forth, the bonds and stock shall be delivered to the buyers and paid for by them as soon after the expiration of said two weeks as the same can be prepared, executed and ready for delivery; provided, however, that the buyers shall not be required to purchase the said bonds and stock if the bonds and stock shall not be delivered by the corporation prior to the expiration of four weeks following the filing of the certificate of reorganization of the corporation as above provided.

All such deliveries of bonds and stock shall be made by the corporation to the buyers and the buyers shall make payment therefor to the corporation at the office of Hemphill, Noyes & Co., in the city of New York.

Should the above examinations and investigations disclose that the plan, in the opinion of the counsel for the buyers, has not been or can not be legally carried into effect, or that the incorporation and present legal status of the corporation is not satisfactory to the counsel for the buyers, or that the said representations of the seller in the opinion of the buyers or his accountants, appraisers, or engineers, are not correct (which shall not, however, relieve the seller from his obligations hereunder in the event the buyers elect to proceed with the purchase), or should the buyers decide that the market conditions do not warrant the purchase by them of the aforesaid securities, or should the buyers fail, within the said period of six weeks, to notify the seller of their intention to purchase the said bonds and shares of stock, thereupon and in such event this agreement shall be and become null and void, and the parties hereto shall be under no obligation whatsoever one to the other.

Fourth. All notices which, under any of the provisions of this agreement, may be given to the buyers shall be in writing and shall be conclusively deemed to have been sufficiently given if delivered at the office of Hemphill, Noyes & Co., 37 Wall Street, city of New York, or if deposited enclosed in a sealed prepaid and registered envolope in the United States mails, in the city of Elmira, New York, addressed to Hemphill, Noyes & Co., 37 Wall Street, New York.

All notices which, under any of the provisions of this agreement, may be given to the seller, shall be in writing and shall be conclusively deemed to have been sufficiently given if delivered at the office of Francis E. Baldwin, in the city of Elmira, New York, or if deposited enclosed in a sealed prepaid and registered envelope in the United States mails, in New York City, addressed to Francis E. Baldwin, Elmira, New York.

Fifth. Should the buyers purchase the said bonds and stock of the corporation as hereinbefore provided, the seller agrees that the

corporation shall agree with the buyers to furnish them, until the payment and satisfaction of all of the bonds, with monthly statements of the sales, earnings and financial condition of the corporation, and at the end of each calendar year, to furnish a report made by a reputable firm of certified public accountants satisfactory to the buyers, or by F. W. Squires & Co.

Sixth. Contemporaneously with the purchase by the buyers of the said bonds and stock of the corporation, the seller shall cause the corporation to pay to Campbell, Heath & Co. the sum of twenty thousand dollars in payment for their services rendered to the corporation in respect of the aforesaid reorganization and purchase of securities by the buyers.

Seventh. All the expenses of the buyers in respect of the examinations to be made by them as hereinbefore provided shall be borne by the buyers, whether or not the bonds and stock of the corporation shall be purchased by the buyers, and the seller will cause the corporation to pay the fees of the counsel for the buyers in respect of the examinations to be made as hereinbefore provided, and the services which they may render to the corporation, whether or not the bonds and stock of the corporation shall be purchased by the buyers.

Eighth. This agreement shall be binding upon and inure to the benefit of the several parties hereto, their executors, administrators, successors, and assigns.

In witness whereof the party of the first part and Hemphill, Noyes & Co., one of the parties of the second part, have hereunto set their hands and seals, and Bonbright & Company, Incorporated, the other of the parties of the second part, has caused its corporate seal to be hereunto affixed and these presents to be executed on its behalf, the day and year first above written.

In the presence of:

F. E. Baldwin.
Hemphill, Noyes & Co.
Bonbright & Company, Inc.,
By A. H. Lockitt.
President.

Attest:

_____ _____,
Secretary.

Exhibit M.

Elmira, N. Y., *April 12, 1920.*

A special meeting of the stockholders of Thatcher Manufacturing Company was held at the offices of the company at Elmira, N. Y., at 9.30 o'clock in the forenoon on the 12th day of April, 1920, pursuant to the following notice:

"A special meeting of the stockholders of the Thatcher Manufacturing Company will be held on the 12th day of April, 1920, at 9.30 o'clock in the a. m. at the office of said company at No. 108 State Street, Elmira, N. Y., for the purpose of voting upon a proposition to increase its common capital stock from one million dollars, con-

sisting of ten thousand shares of the par value of one hundred dollars each, to one million six hundred twenty five thousand dollars to consist of sixteen thousand two hundred and fifty shares of the par value of one hundred dollars each.

FRANCIS E. BALDWIN, *Pres't.*
CASPER DECKER, *Sec'y.*"

The meeting organized by choosing the president of the corporation, a stockholder therein, chairman, and Carleton K. Hevener, also a stockholder, secretary of the meeting.

The secretary of the meeting presented the foregoing notice and the affidavits of Carl Steinhauser and W. H. Mandeville verified, respectively, the 10th day of April, 1920, and the 29th day of March, 1920, and showing, respectively, the publication and mailing of said notice as required by statute and the by-laws.

On motion duly seconded and unanimously carried, said affidavits were ordered spread upon the minutes immediately following the minutes of this meeting.

The secretary of the meeting reported the total number of shares of the corporation's stock authorized as $1,500,000, of which $1,248,500 were outstanding and 7,404 were present at this meeting in person and 2,114 by proxy, and that the proxies of the latter were on file and correct.

The following resolutions were then moved:

"*Resolved*, That the capital stock of this corporation as authorized at 5,000 shares of preferred stock of the par value of $100 each and 10,000 shares of common stock of the par value of $100 each, be, and it hereby is, increased to 5,000 shares of preferred stock of the par value of $100 each and 16,250 shares of common stock of the par value of $100 each, and it is further

"*Resolved*, That the chairman and secretary of this meeting and the proper officers of the corporation be, and they hereby are, directed and authorized to make, sign, certify, acknowledge, and file a certificate of the increase of this corporation's capital stock as required by law and to do all things necessary to effectuate such increase."

The foregoing resolutions were duly seconded and unanimously carried.

There being no further business to come before the meeting, it was, upon motion, adjourned.

(Signed) CARLTON K. HEVENER,
Secretary.

Exhibit N.

JUNE 3, 1920.

STERLING GLASS CO., INC., AND THE BOARD OF DIRECTORS THEREOF:

DEAR SIR: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufac-

turing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY.
By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.

Exhibit O.

Sterling Glass Company, Inc., minutes of special meeting of stockholders.

A special meeting of the stockholders of Sterling Glass Company, Inc., was held at the office of the company, No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 2.00 o'clock p. m.

The meeting was called to order by Mr. Hubert C. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. W. P. Rodgers was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there was present by proxies on file with the records of the company the owners of the entire issued and outstanding capital stock of the company.

The chairman then presented and read to the meeting certain preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at No. 521 Robinson Build-

ing, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m., as follows:

"Whereas Thatcher Manufacturing Company, a New York corporation, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, have acquired all of the shares of the capital stock of the company and by a letter bearing date June 3d, 1920, which reads as follows:

"'JUNE 3, 1920.

"'STERLING GLASS CO., INC., AND THE BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"'Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

"'Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

"'Yours very truly,

"'THATCHER MANUFACTURING COMPANY,
"'By F. E. BALDWIN, *Pres.*,
"'H. C. MANDEVILLE,
"'ELY W. PERSONIUS,
"'LEO WAXMAN,
"'W. P. RODGERS,'

"have requested Sterling Glass Company, Inc., and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to Thatcher Manufacturing Company all of its property of every kind and description and wheresoever situate, as a going concern, including a certain agreement between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all

right, title, and its assumption, and payment of all the debits and obligations of this company, including the assumption of all the obligations of the Sterling Glass Company, Inc., under and pursuant to said agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part: Now, therefore, be it

"*Resolved* That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal to make, execute, and deliver to the said Thatcher Manufacturing Company a bill of sale of all of the property of this company of every kind and description, wheresoever situate, including a certain contract made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, and any of the contracts and leases, and to transfer to said Thatcher Manufacturing Company, by check or draft, all cash in bank, credits or other funds, belonging to the company in the several banks and institutions in which the company may have funds on deposit, and to assign to said Thatcher Manufacturing Company all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign, and transfer to said Thatcher Manufacturing Company all property and other assets of the company of every kind and description, said transfer and assignment to be made, however, only upon the assumption by Thatcher Manufacturing Company of all of the debts and obligations of Sterling Glass Company, Inc., including the assumption of all of the obligations of the Sterling Glass Company, Inc., under and pursuant to a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second, and Sterling Glass Company, Inc., party of the third part; and be it further

"*Resolved*, That, in order to permit the said Thatcher Manufacturing Company, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, as the holders of all of the stock of this company formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the Company, No. 521 Robinson Building, Elmira, N. Y., on the —— day of June, 1920, at —— o'clock m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m., be and the same hereby are ratified, confirmed, and approved.

"There being no further business, the meeting thereupon adjourned.

"(Signed) R. P. RODGERS,
"*Secretary.*"

Exhibit P.

Know all men by these presents, that Sterling Glass Company, Inc., a corporation organized and existing under and pursuant to the laws of the State of New York for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Sterling Glass Company, Inc., has granted, bargained, sold, assigned, and delivered, and by these presents does grant, bargain, sell, assign, and deliver unto said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above-mentioned Sterling Glass Company, Inc., as a going concern, including a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all its right, title, and interest therein, and all other contracts and leases of Sterling Glass Company, Inc.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of sale the Sterling Glass Company, Inc., undertakes to transfer and deliver to Thatcher Manufacturing Company all of its property and assets of every kind and description and undertakes and agrees to make, execute, and deliver to the said Thatcher Manufacturing Company such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Sterling Glass Company, Inc., its successors and assigns, the personal property and chattels which are included in the above-mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Sterling Glass Company, Inc., has caused these presents to be signed by its corporate seal to be hereunto affixed this 7th day of June, A. D. 1920.

STERLING GLASS COMPANY, INC.,
(Signed) By H. C. MANDEVILLE,

Attest:

[CORPORATE SEAL.] (Signed) LEO WAXMAN,
Secretary.

Exhibit Q.

ELMIRA, N. Y., *June 3, 1920.*

A special meeting of the board of directors of Thatcher Manufacturing Company was held at the offices of the company on Thursday, June 3rd, 1920.

Present: President F. E. Baldwin and directors, H. C. Mandeville, S. G. H. Turner, R. W. Niver, Jervis Langdon, C. F. Bullard.

On motion of Mr. Langdon, Mr. Bullard was named secretary of the meeting.

The chairman submitted to the meeting a copy of a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part and Sterling Glass Co., Inc., party of the third part, and stated that the Thatcher Manufacturing Company was the owner of 2,492 shares of the capital stock of Sterling Glass Company, Inc., of the par value of $100 each, and could obtain the balance of the outstanding capital stock of said company, excepting eight shares outstanding in the name of directors, namely 2,500 shares of the par value of $100 each at par, and interest from August 29th, 1919, and further states that it was deemed advisable and for the best interests of the company, in connection with its plan to acquire all of the assets and properties of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the entire outstanding common stock of the Woodbury Glass Company, that it acquire the balance of the outstanding stock of the Sterling Glass Company, Inc.

After due consideration the following resolution was offered by Mr. Mandeville, seconded by Mr. Turner, and unanimously adopted:

"*Resolved*, That the proper officers of the company be, and they hereby are, authorized, empowered, and directed to acquire 2,500 shares of the capital stock of the Sterling Glass Co., Inc., at par and to pay therefor the sum of $250,000 and interest from Aug. 27, 1919."

The chairman then submitted to the meeting a proposed letter to be addressed by the Thatcher Manufacturing Company, and the holders of the balance of the outstanding stock of Sterling Glass Company, Inc., to Sterling Glass Company, Inc., and the board of directors thereof, after the acquisition by it of the said 2,500 shares of the capital stock of Sterling Glass Co., Inc., as follows:

"JUNE, 1920.

"STERLING GLASS COMPANY, INC., AND THE
BOARD OF DIRECTORS THEREOF:

"DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to the Thatcher Manufacturing Company. Upon such transfer the Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to the Thatcher Manufacturing Company all of the property and assets of Sterling Glass Company, Inc., of every kind and description and wheresoever situate, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28, 1919, together with its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of the debts and obligations of Sterling Glass Company, Inc.

"Furthermore, the undersigned request the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as holders of all the stock of Sterling Glass Company, Inc., to take all the necessary [*proceedings*] and vote the said stock so as to consummate said dissolution.

"Yours very truly,

"THATCHER MANUFACTURING COMPANY,

"By ----------

Mr. Mandeville offered the following resolution, which was seconded by Mr. Turner and unanimously adopted:

"*Resolved*, That upon the acquisition of said outstanding capital stock of the Sterling Glass Company, Inc., the proper officers of the company be, and they hereby are, authorized, empowered, and directed to execute and deliver to Sterling Glass Company, Inc., and the board of directors thereof a letter in the form submitted to this meeting, and in the event of the acceptance thereof by the Sterling Glass Company, Inc., and the board of directors thereof, the proper officers of the company be, and they hereby are, authorized, empowered, and directed to accept on behalf of Sterling Glass Company, Inc., and to execute any and all obligations which may be necessary or proper in order to evidence the assumption by this company of all of the debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made on the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Co., Inc., party of the third part."

Mr. Mandeville nominated Mr. Stanton Griffis as director to fill the vacancy caused by the resignation of Dr. T. L. Kane as director. The nomination was seconded by Mr. Turner. Carried.

On motion the meeting adjourned.

———— ————, *Sec'y.*

Exhibit R.

Sterling Glass Company, Inc.—Minutes of special meeting of the board of directors.

A special meeting of the board of directors of Sterling Glass Company, Inc., was held at the office of the company, No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m.

Present: Messrs. H. C. Mandeville, E. W. Personius, and Wm. P. Rodgers, being a majority of the directors of the company and constituting a quorum thereof.

The meeting was called to order by Mr. Huber C. Mandeville, the president of the company, who presided, and Mr. E. W. Personius acted as secretary of the meeting.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by all the directors of the company, which was ordered prefixed to the minutes of the meeting.

Upon motion duly made and seconded, the following preambles and resolutions were unanimously adopted:

"Whereas Thatcher Manufacturing Company, a New York corporation, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, have acquired all of the shares of the capital stock of this company and by a letter bearing date June 3d, 1920, which reads as follows:

"'JUNE 3d, 1920.

"'STERLING GLASS COMPANY, INC., AND
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, Williams Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"'Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

"'Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

"'Yours very truly,

"'THATCHER MANUFACTURING COMPANY,

By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.'

"have requested Sterling Glass Company, Inc., and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to Thatcher Manufacturing Company all of its property of every kind and description and wheresoever situate, as a going concern, including a certain agreement between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all right, title, and interest therein, in consideration of one dollar ($1.00) and its assumption and payment of all the debts and obligations of this company, including the assumption of all the obligations of the Sterling Glass Company, Inc., under and pursuant to said agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part: Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal, to make, execute, and deliver to the said Thatcher Manufacturing Company a bill of sale of all of the property of this company of every kind and description, wheresoever situate, including a certain contract made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, and any other contracts and leases, and to transfer to said Thatcher Manufacturing Company, by check or draft all cash in bank, credits, or other funds, belonging to the company in the several banks and institutions in which the company may have funds on deposit, and to assign to said Thatcher Manufacturing Company all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign and transfer to said Thatcher Manufacturing Company all property, and other assets of the company of every kind and description, said transfer and assignment to be made, however, only upon the assumption by Thatcher Manufacturing Company of all of the debts and obligations of Sterling Glass Company, Inc., including the assumption of all of the obligations of the Sterling Glass Company, Inc., under and pursuant to a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part; and be it further

"*Resolved*, That in order to permit the said Thatcher Manufacturing Company, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, as the holders of all the stock of this company formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company, No. 521 Robinson Building, Elmira, N. Y., on the —— day of June, 1920, at —— o'clock, — m., to vote upon and ratify the foregoing resolutions.

"There being no further business, the meeting thereupon adjourned.

"(Signed) ELY W. PERSONIUS,
Secretary."

Exhibit S.

JUNE 7TH, 1920.

TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIR: We, the undersigned, have acquired all the shares of the capital stock of Travis Glass Company, and are desirous of having Travis Glass Company dissolved, and in anticipation of such dissolution, to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Travis Glass Company.

Therefore, we hereby request Travis Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Travis Glass Company.

Furthermore, we request the board of directors of Travis Glass Company to institute proper proceedings under the laws of the State of West Virginia for the voluntary dissolution of Travis Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Travis Glass Company, to take all the necessary proceedings, and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

H. E. TRAVIS.
P. W. ROBINSON.
F. E. BALDWIN.
F. L. COLLINS.
R. W. NIVER.

Exhibit T.

Travis Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Travis Glass Company was held at the principal office of the company in the city of Clarksburg, West Virginia, on the 12th day of June, 1920, at 2.00 o'clock p. m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. P. M. Robinson was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the company, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at 108 State Street, Elmira, N. Y., on the 12th day of June, 1920, at 11.30 o'clock a. m., as follows:

"Whereas H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver have acquired all of the shares of the capital stock of this company and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7TH, 1920.

"'TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of Travis Glass Company and are desirous of having Travis Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Travis Glass Company.

"'Therefore, we hereby request Travis Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate as a going concern, togethere with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all the debts and obligations of Travis Glass Company.

"'Furthermore, we request the board of directors of Travis Glass Company to institute proper proceedings under the laws of the State of West Virginia for the voluntary dissolution of Travis Glass Company and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Travis Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'H. E. TRAVIS.
"'P. W. ROBINSON.
"'F. E. BALDWIN.
"'F. L. COLLINS.
"'R. W. NIVER.'

"have requested the Travis Glass Company and its board of directors to institute proper proceedings for its dissolution and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominees or nominee, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of all of the debts and obligations of this company; Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this

company and under its corporate seal, to make, execute, and deliver to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, by check or draft, all cash in bank, credits, or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign, transfer, and convey to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description: and be it further

"*Resolved*, That, in order to permit said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at Clarksburg, West Virginia, on the 12th day of June, 1920, at 2.00 o'clock p. m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at 108 State Street, Elmira, N. Y., on the 12th day of June, 1920, at 11.30 o'clock a. m., be, and the same hereby are, ratified, confirmed, and approved."

There being no further business, the meeting thereupon adjourned.

(Signed) P. M. ROBINSON,
Secretary.

Exhibit U.

JUNE 14, 1920.

TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, we hereby request that you cause said assets and property to be conveyed, transferred, and set over to Thatcher Manufacturing Company, a New York corporation, having its principal place of business at No. 108 State Street, Elmira, N. Y. Whereupon Thatcher

Manufacturing Company will assume and pay all of the debts and obligations of Travis Glass Company.

Yours very truly,

F. E. BALDWIN.
P. M. ROBINSON.
R. W. NIVER.
FRANK L. COLLINS.
H. E. TRAVIS.

Exhibit V.

Know all men by these presents, that Travis Glass Company, a corporation organized and existing under and pursuant to the laws of the State of West Virginia, for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Travis Glass Company, has granted, bargained, sold, assigned, and delivered, and by those presents does grant, bargain, sell, assign, and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above-mentioned Travis Glass Company, as a going concern, including certain contracts and leases of Travis Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of said sale the Travis Glass Company, undertake to transfer and deliver to Thatcher Manufacturing Company, all of its property and assets of every kind and description, and undertakes and agrees to make, execute, and deliver to the said Thatcher Manufacturing Company, such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Travis Glass Company, its successors and assigns, the personal property and chattels which are included in the above-mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Travis Glass Company has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed, this 25th day of June, A. D. 1920.

TRAVIS GLASS COMPANY,
By (signed) F. E. BALDWIN,
President.

Attest:

FRANK L. COLLINS,
Secretary.

[CORPORATE SEAL.]

Exhibit W.

JULY 3, 1920.

TRAVIS GLASS COMPANY,
Clarksburg, W. Va.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, P. M. Robinson, R. W. Niver, Frank L. Collins, and H. E. Travis, in accordance with letter of instructions of said parties to you, bearing date June 14, 1920, of all of the property and assets of the Travis Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Travis Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,

THATCHER MANUFACTURING COMPANY,
By (Signed) F. E. BALDWIN,
President.

Exhibit X.

JUNE 7, 1920.

ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF.

DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of Essex Glass Company, and are desirous of having Essex Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume or pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Essex Glass Company.

Therefore, we hereby request Essex Glass Company and its board or directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Essex Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees, of all of the debts and obligations of Essex Glass Company.

Furthermore, we request the board of directors of Essex Glass Company to institute proper proceedings under the laws of the State of Ohio for the voluntary dissolution of Essex Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Essex Glass Company,

to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

R. W. LAMB.
CHAS. M. TIGNER.
WATSON PICKARD.
F. E. BALDWIN.
F. L. COLLINS.
R. W. NIVER.

Exhibit Y.

Essex Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Essex Glass Company was held at the principal office of the company at Mount Vernon on the 11th day of June, 1920, at 3.00 o'clock p. m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. R. M. Lamb was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the company, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at the principal office of the company at Mount Vernon, Ohio, on the 11th day of June, 1920, at 2.00 o'clock p. m., as follows:

"Whereas R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, have acquired all of the shares of the capital stock of this company, and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7th, 1920.

"'ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: We, the undersigned, hace acquired all the shares of the capital stock of Essex Glass Company and are desirous of having Essex Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Essex Glass Company.

"'Therefore, we hereby request Essex Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Essex

Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Essex Glass Company.

"'Furthermore, we request the board of directors of Essex Glass Company to institute proper proceedings under the laws of the State of Ohio, for the voluntary dissolution of Essex Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Essex Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'R. W. LAMB.
"'CHAS. M. TIGNER.
"'WATSON PICKARD.
"'F. E. BALDWIN.
"'F. L. COLLINS.
"'R. W. NIVER.'

"have requested the Essex Glass Company and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominee or nominees, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will, in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of all of the debts and obligations of this company: Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal, to make, execute, and deliver to the said R. W. Lamb, Chas. M. Tigner, F. E. Baldwin, F. L. Collins, Watson Pickard, and R. W. Niver, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, by check or draft, all cash in bank, credits, or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and, generally, to assign, transfer, and convey to the said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description; and be it further

"*Resolved*, That, in order to permit said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of

directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at Mount Vernon, Ohio, on the 11th day of June, 1920, at 3.00 o'clck p. m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at the principal office of the company, at Mount Vernon, Ohio, on the 11th day of June, 1920, at 2.00 o'clock p. m., be, and the same hereby are, ratified, confirmed and approved."

There being no further business, the meeting thereupon adjourned.

(Signed) R. M. LAMB,
Secretary.

Exhibit Z.

JUNE 16TH, 1920.

ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Essex Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, we hereby request that you cause said assets and property to be conveyed, transferred, and set over to Thatcher Manufacturing Company, a New York corporation, having its principal place of business at No. 108 State St., Elmira, N. Y. Thereupon Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Essex Glass Company.

Yours very truly,

F. E. BALDWIN.
CHAS. M. TIGNER.
R. W. NIVER.
FRANK L. COLLINS.
R. M. LAMB.
WATSON PICKARD.

Exhibit Z–1.

Know all men by these presents, that Essex Glass Company, a corporation organized and existing under and pursuant to the laws of the State of Ohio for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Essex Glass Company,

has granted, bargained, sold, assigned, and delivered, and by these presents does grant, bargain, sell, assign and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above mentioned Essex Glass Company, as a going concern, including certain contracts and leases of Essex Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof forever.

Under and by this bill of sale, the Essex Glass Company undertakes to transfer and deliver to Thatcher Manufacturing Company, all of its property and assets of every kind and description, and undertakes and agrees to make, execute and deliver to the said Thatcher Manufacturing Company such checks, bills of sale, assignments of contracts and leases and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Essex Glass Company, its successors and assigns, the personal property and chattels which are included in the above mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Essex Glass Company, has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed this 17th day of June, A. D. 1920.

ESSEX GLASS COMPANY,
By F. E. BALDWIN.

Attest:
[CORPORATE SEAL.] FRANK L. COLLINS,
Secretary.

Exhibit Z–2.

JULY 3RD, 1920.

ESSEX GLASS COMPANY,
Mt. Vernon, Ohio.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, Charles M. Tigner, R. W. Niver, Frank L. Collins, R. L. Lamb, and Watson Pickard, in accordance with letter of instructions of said parties to you, bearing date June 16, 1920, of all of the property and assets of the Essex Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Essex Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,

THATCHER MANUFACTURING COMPANY,
By F. E. BALDWIN,
President.

Exhibit Z–3.

JUNE 7TH, 1920.

LOCKPORT GLASS COMPANY AND THE BOARD OF DIRECTORS THEREOF:

DEAR SIRS: We, the undersigned have acquired all of the shares of the capital stock of Lockport Glass Company and are desirous of having Lockport Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees, subject to the debts and obligations of Lockport Glass Company.

Therefore, we hereby request Lockport Glass Company, and its Board of Directors to cause to be transferred and set over to us or our nominee or nominees, all of the property and assets of Lockport Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) subject to the debts and obligations of the Lockport Glass Company.

Furthermore, we request the board of directors of Lockport Glass Company to institute proper proceedings under the laws of the State of New Jersey for the voluntary dissolution of Lockport Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of Lockport Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

F. E. BALDWIN.
H. C. MANDEVILLE.
FRANK L. COLLINS.
R. W. NIVER.
R. P. LUCE.
R. S. KEEP.
W. E. MCCOMB.

Exhibit Z–4.

Lockport Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Lockport Glass Company was held at the principal office of the company at 243 Washington Street, Jersey City, New Jersey, on the 24th day of June, 1920, at 12.00 o'clock m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. John H. Youngs was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the com-

pany, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at 108 State Street, Elmira, N. Y., on the 24th day of June, 1920, at 11.00 o'clock a. m., as follows:

"Whereas F. E. Baldwin, H. C. Mandeville, R. W. Niver, F. L. Collins, R. P. Luce, R. S. Keep, and W. E. McComb, have acquired all of the shares of the capital stock of this company, and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7TH, 1920.

"'LOCKPORT GLASS COMPANY and the
BOARD OF DIRECTORS thereof.

"'DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of the Lockport Glass Company, and are desirous of having Lockport Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Lockport Glass Company.

"'Therefore, we hereby request Lockport Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Lockport Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Lockport Glass Company.

"'Furthermore, we request the board of directors of Lockport Glass Company to institute proper proceedings under the laws of the State of New Jersey, for the voluntary dissolution of Lockport Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Lockport Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'F. E. BALDWIN.
"'H. C. MANDEVILLE.
"'F. L. COLLINS.
"'R. W. NIVER.
"'R. P. LUCE.
"'R. S. KEEP.
"'W. E. MCCOMB.'

"have requested the Lockport Glass Company and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominee or nominees, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will, in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of

all of the debts and obligations of this company. Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed on behalf of this company and under its corporate seal to make, execute, and deliver to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb or their nominee or nominees, by check or draft, all cash in bank, credits or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and, generally, to assign, transfer, and convey to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description; and be it further

"*Resolved*, That, in order to permit said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at 243 Washington Street, Jersey City, New Jersey, on the 24th day of June, 1920, at 12.00 o'clock m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions duly adopted at a special meeting of the board of directors of this company, held at 108 State Street, Elmira, N. Y., on 24th day of June, 1920, at 11.00 o'clock a. m., be, and the same hereby are, ratified, confirmed and approved."

There being no further business, the meeting thereupon adjourned.

JOHN H. YOUNG, *Secretary*.

Exhibit Z–5.

JUNE 24TH, 1920.

LOCKPORT GLASS COMPANY and the BOARD OF DIRECTORS thereof.

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Lockport Glass Company of every kind and description and whereso-

ever situate, as a going concern, together with its good-will, we hereby request that you cause said assets and property to be conveyed, transferred and set over to Thatcher Manufacturing Company, a New York Corporation, having its principal place of business at No. 108 State Street, Elmira, N. Y. Thereupon Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Lockport Glass Company.

Your very truly,

(Signed) F. E. BALDWIN.
H. C. MANDEVILLE.
R. W. NIVER.
FRANK L. COLLINS.
W. C. MCCOMB.
R. S. KEEP.
R. P. LUCE.

Exhibit Z–6.

Know all men by these presents that Lockport Glass Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, for and in consideration of the sum of one dollar ($1.00) and other good and valuable consideration to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Lockport Glass Company, has granted, bargained, sold, assigned and delivered, and by these presents does grant, bargain, sell, assign and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above mentioned Lockport Glass Company, as a going concern, including certain contracts and leases of Lockport Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of sale the Lockport Glass Company undertakes to transfer and deliver to Thatcher Manufacturing Company all of its property and assets of every kind and description, and undertakes and agrees to make, execute and deliver to the said Thatcher Manufacturing Company, such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company its successors and assigns, legal title to said property and assets.

And the said Lockport Glass Company, its successors and assigns, the personal property and chattels which are included in the abovementioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Lockport Glass Company has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed, this 25th day of June, A. D., 1920.

LOCKPORT GLASS COMPANY,
By F. E. BALDWIN, *President.*

Attest:
FRANK L. COLLINS, *Secretary.*
(Corporate seal.)

Exhibit Z–7.

JULY 3, 1920.

LOCKPORT GLASS COMPANY,
243 Washington Street,
Jersey City, N. J.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, H. C. Mandeville, R. W. Niver, Frank L. Collins, W. E. McComb, R. S. Keep, and R. P. Luce, in accordance with letter of instructions of said parties to you, bearing date June 24, 1920, of all the property and assets of the Lockport Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good-will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Lockport Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,
THATCHER MANUFACTURING COMPANY,
(Signed) By F. E. BALDWIN, *President.*

Exhibit Z–8.

Thatcher Manufacturing Company,

Main office, Elmira, N. Y.

ELMIRA, N. Y., *Oct. 18, 1920.*

FEDERAL TRADE COMMISSION,
20 West 38th St.,
New York, N. Y.

GENTLEMEN: In pursuance to conversation with Frank B. Lent, Esq., your attorney and examiner, you are advised as follows:

1. Thatcher Manufacturing Company is a corporation, organized and existing under the laws of the State of New York since February, 1905. It is and has been since its organization engaged in manufacturing and selling milk bottles throughout the United States. In July, 1919, it owned and operated plants making milk bottles at Elmira, N. Y., Kane, Pa., and Streator, Ill., and it sold the product of these plants through its own sales organization. It had and now

has the exclusive right to manufacture milk bottles upon the Owens bottle machine.

2. It has purchased and now owns all the assets and assumed all the liabilities of the Travis Glass Co., a West Virginia corporation; the Essex Glass Co., an Ohio corporation; and the Lockport Glass Co., a New Jersey corporation. It has also purchased and now owns the Hartford-Fairmount license and milk-bottle machine issued to the J. T. and A. Hamilton Company; of Pittsburgh, Pa.

3. Thatcher Manufacturing Company has since its organization sold milk bottles in interstate commerce, and since its purchase of the assets of the above-named companies it has sold and now sells milk bottles in interstate commerce, including the product of the plants formerly belonging to the above-named companies, except that the J. T. and A. Hamilton Company sell milk bottles at Pittsburgh, Pa., and vicinity.

4. Each of the above-named companies before the purchase by Thatcher Manufacturing Company of the plants belonging to said companies sold milk bottles in competition with each other and in competition with Thatcher Manufacturing Company in interstate commerce.

Very truly yours,

THATCHER MANUFACTURING COMPANY,

(Sgd.) By F. E. BALDWIN, *Pres't.*

Exhibit Z–9.

(Closed issue.)

$2,000,000.

Thatcher Manufacturing Company.

Ten-year 7% convertible sinking fund mortgage gold bonds.

Dated April 1, 1920. Due April 1, 1930.

Redeemable as a whole or any part at the option of the company on any interest date on sixty days' notice at 105 and accrued interest. Interest payable April 1st and October 1st. Principal and interest payable at the office of the trustee. Coupon bonds in denominations of $1,000, $500 and $100; registerable as to principal only.

The company will agree to pay interest without deduction for any Federal income tax not in excess of 2% which it may lawfully pay at the source. Pennsylvania State tax of four mills refunded.

Stock purchase warrants: The bonds will carry detachable warrants entitling the holder to purchase common stock at $40 per share, at the rate of 25 shares of common for each $1,000 par value of bonds, at any time prior to and including April 1, 1922.

Conversion privilege: The bonds will be convertible after April 1, 1922, and until maturity into 8% cumulative preferred stock of the company, par for par, or when accompanied by warrants into common stock at $40 a share at any time after April 1, 1922, and to and including April 1, 1925, and thereafter at $50 a share, or in each case until their earlier redemption, with adjustment of interest and dividends in respect to preferred stock to date of conversion.

Guaranty Trust Company of New York, Trustee.

For further particulars concerning this issue, reference is made to the accompanying letter of Mr. Francis E. Baldwin, president of Thatcher Manufacturing Company, summarized as follows:

Business.—Thatcher Manufacturing Company, originally incorporated in 1889, has for many years been the largest manufacturer of milk bottles in the United States, and will produce about 90% of the milk bottles manufactured in the United States. The plants of the company will have a capacity for the production of over 150,000,000 milk bottles and 75,000,000 condiment and other bottles per year.

Property.—Modern manufacturing plants are located at Elmira, Lockport, and Dunkirk, New York; Streator, Illinois; Kane, Pennsylvania; Mt. Vernon, Ohio; Parkersburg, Clarksburg, and Cedar Grove, West Virginia; and Winchester, Indiana. The company will have the exclusive right to make milk bottles by both the Owens bottle machine and the Hartford-Fairmont machine, the only successful automatic bottle machines devised.

Purpose of issue.—Proceeds from the sale of these bonds will be used to complete the company's purchase of the property of Travis Glass Company, Lockport Glass Company, Essex Glass Company, the common stock of Woodbury Glass Company, and the milk-bottle business of J. T. & A. Hamilton Glass Company, and to provide additional working capital for its rapidly growing business.

Security.—These bonds are secured by a closed mortgage upon all of the property of the company and upon all of the common stock of the Woodbury Glass Company, subject only to the lien of the mortgage now outstanding for $149,500 on a portion of the property of the company which is not callable.

Assets.—Net assets at December 31, 1919, after reserve for depreciation, and not including any intangible assets such as licenses, formulæ, contracts, etc., and including the common stock of the Woodbury Glass Company, amounted to $4,463,360. This is equal to or over twice the $2,149,500 of bonds to be outstanding.

Earnings.—Net earnings available for bond interest for the year ended December 31, 1919, after reserve for depreciation, amounted to $577,351, or equal to over three and three-quarters times the annual interest charges on all bonds outstanding. On the same basis current net earnings are running at the rate of about $1,000,000 per annum. It is estimated that earnings for the year ending December 31, 1920, after deducting Federal taxes and depreciation, will amount to more than $850,000, which, after providing for bond interest and preferred dividends, is equal to more than $8.00 per share on the outstanding 80,000 shares of common stock about to be issued.

Sinking fund.—An annual sinking fund will be provided in the trust indenture for the retirement of the bonds at not exceeding 105 and accrued interest and will retire over half of this issue by maturity. For the purpose of this fund, $50,000 will be payable during the first year, $100,000 for each of the five years

thereafter and $150,000 per annum thereafter until maturity, less the principal amount of any bonds converted during the year.

Management.—The present financial plans will result in no change in management which has been in successful operation practically since the inception of the business.

All legal details concerning the validity of these bonds will be passed upon by Beekman, Menken & Griscom, for the bankers, and by Mandeville, Personius and Newman for the company. The accounts of the company have been admitted by Arthur Young & Company for the bankers and Squires & Company, certified public accountants, for the company, and valuations have been made by Coates and Burchard and the American Appraisal Company, and engineering reports by Day & Zimmerman, engineers.

The above bonds are offered when, as, and if issued and received by us, at 95 and accrued interest to yield about 7¾%.

Trust receipts of Guaranty Trust Company of New York will be issued, exchangeable for bonds, when, as, and if received from the company.

Bonbright & Company, Incorporated.

25 Nassau Street, New York.

Boston. Chicago.
Philadelphia. Detroit.
London. Paris.

The information contained herein is derived from sources which we regard as reliable, and all statements in this circular are based upon such information.

Exhibit Z–10.

THATCHER MANUFACTURING COMPANY,
ELMIRA, N. Y., *April 23, 1920.*

BONBRIGHT & COMPANY, INC.,
MESSRS. HEMPHILL, NOYES & CO.

GENTLEMEN: The following information is submitted in connection with the issue of $2,000,000 ten-year 7% convertible sinking fund mortgage gold bonds of Thatcher Manufacturing Company.

History.

Thatcher Manufacturing Company was originally incorporated in 1889, to manufacture milk-bottle caps and dairy supplies, and in 1905 began the manufacture of milk bottles, its first factory being located at Kane, Pa., with a capacity of 7,500,000 milk bottles per year. Within three years the demand for its products required the construction of a second plant at Streator, Ill., with an annual capacity of 20,000,000 bottles. Four years lated it was necessary to build a third plant at Elmira, N. Y., with a capacity of 30,000,000 bottles per year. During this period the company became the first licensee of the automatic bottle machine made by the Owens Bottle

Machine Company, and holds the exclusive rights to make milk bottles on this machine, with the right to have all improvements at any time made to this machine and the exclusive right to use any new machines at any time owned or acquired by the Owens Bottle Machine Company.

With the proceeds of this issue of bonds, the Thatcher Company will acquire the property of the Travis Glass Company, with plants located at Clarksburg and Cedar Grove, W. Va.; the property of the Essex Glass Company, with plants located at Mt. Vernon, Ohio, Parkersburg, W. Va., and Dunkirk, N. Y.; the property of the Lockport Glass Company, with plants located at Lockport, N. Y.; and the milk-bottle business and Hartford-Fairmont machine and license of J. T. & A. Hamilton Company located at Pittsburg, Pa.; and also all of the common stock of the Woodbury Glass Company, located at Winchester, Ind. Through these purchases the Thatcher Company will acquire the exclusive right to make milk bottles on the Hartford-Fairmont machines, another automatic process.

Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful automatic bottle machines devised and will manufacture and sell about 90% of all the milk bottles manufactured in the United States.

Capitalization.

The capitalization of the Thatcher Manufacturing Company at the completion of the present financing will be as follows:

Funded debt:		
Ten-year 7% convertible sinking fund mortgage gold bonds (this issue)	$2,000,000	$2,000,000
Underlying 6% bonds	Closed.	149,500
Capital stock:		
Preferred stock 8% cumulative	2,500,000	250,000
Common stock, no par value	130,000 shares.	80,000 shares.

All of the unissued common stock, 50,000 shares, is reserved for subscription under the stock purchase warrants, and/or for conversion of these bonds; of the unissued preferred stock, $2,000,000 is reserved for the conversion of these bonds, and the remainder available for future requirements of the company.

Purpose of issue.

The proceeds of these bonds will be used to complete the company's purchase of the property of Travis Glass Company, Lockport Glass Company, Essex Glass Company, the common stock of Woodbury Glass Company, and the milk bottle business of J. T. & A. Hamilton Company, and to provide additional working capital for its rapidly growing business.

Stock purchase warrants and conversion privileges.

The bonds will carry detachable warrants entitling the holder to purchase common stock at $40 per share at the rate of twenty-five shares of common stock for each $1,000 par value of bonds, at any

time prior to and including April 1, 1922. The bonds will be convertible upon ten days' previous notice to the company into 8% cumulative preferred stock of the company, par for par, after April 1, 1922, and until maturity or until any earlier redemption. The bonds when accompanied by warrants originally attached to such bonds, or by other warrants detacher from an equal par value amount of bonds, will be convertible upon ten days' previous notice to the company at any time after April 1, 1922, and prior to and including April 1, 1925, into common stock on the basis of par for the bonds and $40 per share for the common stock and thereafter until maturity into common stock on the basis of par for the bonds and $50 per share for the common stock, or in each case until earlier redemption of the bonds, with adjustment of interest and dividends in respect to preferred stock to date of conversion.

To protect the value of the stock purchase and conversion privileges, throughout the life of the bonds, the trust indenture will provide that so long as any of these bonds are outstanding, the corporation will not create or issue any shares of stock having preference or priority over or on a parity with the authorized preferred stock, or increase the authorized common stock without the written consent of the holders of at least a majority of the outstanding bonds.

Security.

The bonds will be secured by a closed mortgage upon all the property of the company and upon all the common stock of Woodbury Glass Company, subject to the lien of the bonds (not callable) now outstanding, amounting to $149,500 on a portion of the property of the company. The various plants thus covered by the lien of these bonds have a value as of December 31, 1919, after reserve for depreciation of $3,162,119. The value of the common stock of Woodbury Glass Company is evidenced by the fact that it will represent a cash investment by Thatcher Manufacturing Company of $600,000.

Sinking fund.

An annual sinking fund will be provided in the trust indenture for the retirement of the bonds at not exceeding 105 and accrued interest and will retire over half of this issue by maturity. For the purpose of this fund, $50,000 will be payable during the first year, $100,000 for each of the five years thereafter, and $150,000 per annum thereafter until maturity less the principal amount of any bonds converted during the year.

Sales and profits.

The following statement shows the volume of business and net profits during the three years ended December 31, 1919:

Year.	Sales.	Net earnings available for interest on bonds.
1917	$3,423,220	$330,956
1918	4,109,464	400,254
1919	4,293,843	577,351
1920 (estimated)	6,000,000	1,000,000

Net earnings available for bond interest for the year ended December 31, 1919, after reserve for depreciation amounted to $577,351, or equal to over three and three-quarters times annual interest charges on all the bonds outstanding. On the same basis, current net earnings are running at the rate of about $1,000,000 per annum. It is estimated that earnings for the year ending December 31, 1920, after deducting Federal taxes and depreciation, will amount to more than $850,000, which, after providing for bond interest and preferred dividends, is equal to more than $8.00 per share on the outstanding 80,000 shares of common stock about to be issued.

From the year 1910 until 1916, Thatcher Manufacturing Company alone showed average net earnings in excess of $163,000 per annum.

Financial condition.

The accounts of the company have been audited by Messrs. Arthur Young & Company, accountants and auditors, who have prepared the following statement of assets and liabilities as of December 31, 1919, after giving effect to the present financing, and including estimated reserve for Federal taxes.

ASSETS.

Current assets:	
Cash in bank and on hand	$354,580.04
Accounts receivable less reserve	424,970.19
Inventories	541,167.66
Liberty bonds	280,350.00
Deferred	51,792.84
Total current assets	1,652,860.73
Investments in other Companies (including Woodbury Glass Co.)	632,105.00
Real estate, plants and equipment, per appraisals of American Appraisal Company and Coates and Burchard (after reserve for depreciation)	3,162,119.94
Licenses, formulæ and contracts	1,340,351.09
	6,787,436.76

LIABILITIES.

Current liabilities:	
Notes and accounts payable	$483,643.91
Accruals and reserve, including Federal taxes	317,514.55
Total current liabilities	801,158.46
Funded debt:	
Ten-year 7% convertible sinking fund mortgage gold bonds (this issue)	2,000,000.00
6% mortgage bonds	149,500.00
Capital stock:	
Preferred stock (outstanding)	250,000.00
Common stock (80,000 shares, no par value, outstanding)	3,586,778.30
	6,787,436.76

From the above statement it will be noted that the net assets, at December 31, 1919, after reserve for depreciation, and not including any intangible assets such as license, formulæ, contracts, etc., and including the common stock of the Woodbury Glass Company,

amounted to $4,463,360. This is equal to over twice the $2,149,500 of bonds to be outstanding.

The future.

In 1905, when the Thatcher Company began the manufacture of milk bottles, the sale of these containers for the entire country did not exceed 15,000,000 per year—to-day the market takes over 150,000,000 and the demand is steadily increasing. Original customers who were buying of the Thatcher Company in one carload lots or less, are now buying fifty and seventy-five carloads and some are taking as high as 20,000,000 bottles, or about 900 cars a year. I estimate that the present consumption in bottles in the United States should double within the next five years through the development of territory which is now practically untouched, and our business should be still further enlarged by the increase in export business which has already commenced through Thatcher customers in England, France, Australia, New Zealand, South Africa, China, India, and South America.

The Thatcher Company has always sold more that 90% of its bottles direct to milk dealers. Despite the general rise in all commodities, the company has not advanced the price of milk bottles since July, 1918.

The Woodbury Glass Company: This company has been in existence for twenty-five years, and started making whiskey bottles, changing to manufacture of food containers about four years ago. It has a license under the Hartford-Fairmont patents for the manufacture of condiment bottles, including the right to make fruit jars, grape juice bottles, cider, vinegar, horse-radish and catsup bottles, and all bottles and containers used for food and food ingredients. It has also the right to make polish bottles and high pressure ware, such as bottles for carbonated drinks, ginger-ale and Coca-Cola bottles. This company is sold up on its products for many months ahead, and with the possible development of this business, I estimate that earnings of this subsidiary should be not less than $150,000 for 1920 and $250,000 for 1921.

Location of plants.

Elmira, N. Y.: Three furnaces, 6 Owens machines, of which 4 are six-arm machines and 2 ten-arm machines.

Streator, Ill.: Two furnaces, 4 Owens machines, all six-arm machines.

Kane, Pa.: Two furnaces, 4 six-arm Owens machines.

Lockport, N. Y. (two factories): One furnace each, with three Hartford-Fairmont feeders and 6 Hartford-Fairmont machines.

Dunkirk, N. Y.: One furnace with two Hartford-Fairmont feeders and four machines.

Parkersburg, W. Va.: One furnace, one Hartford-Fairmont feeder and two machines.

Mt. Vernon, O.: Two furnaces, one Hartford-Fairmont feeder, and two machines. There is another furnace working with a semi-automatic machine. It is proposed to change this to Hartford-Fairmont feeder and machines.

Clarksburg, W. Va.: Two furnaces and two Hartford-Fairmont feeders and four machines.

Cedar Grove, W. Va.: A new plant entirely, just in operation February 12. It is planned for five furnaces. It now has one furnace in operation with two Hartford-Fairmont feeders and four machines.

Winchester, Indiana (Woodbury Glass Co.): Three furnaces and six Hartford-Fairmont feeders and eighteen machines.

Total capacity.

Under present conditions the capacity of these plants is about 150,000,000 milk bottles per year. The capacity for condiment and other bottles at present is about 75,000,000 per year, and with one more furnace to be installed, will be 115,000,000 condiment bottles.

Management.

The management of Thatcher Manufacturing Company, which has been unchanged practically since its inception, will continue in control of the corporation.

Very truly yours,

FRANCIS E. BALDWIN,
President.

STATE OF NEW YORK,
County of New York, ss:

This certifies that I have this day compared the foregoing with the original signed copy and that the same is a true and correct copy thereof.

Witness my hand and seal this 13th day of April, 1922.

(sgd.) MARY G. DEVANNY.

STATE OF NEW YORK,
County of New York, ss:

Mary G. Devanny of the city of New York, State of New York, deposes and says that she has compared the foregoing with the original copy signed by Francis E. Baldwin, and that the same is a true and correct copy of said original copy.

Subscribed and sworn to before me this 13 day of April, 1922.

(sgd.) G. J. WIGHTMAN, (seal)
Notary Public, Kings County, No. 79.
Certificate file in N. Y. " No. 164.
Register's No. Kings County, No. 4073.
" " N. Y. " No. 4173.

Commission expires March 30, 1924.

ORDER APPOINTING EXAMINER.

(Dated August 14, 1922.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 14th day of August, A. D., 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order for appointment of examiner.

The above entitled proceeding being at issue and ready for the taking of testimony, it is hereby

Ordered, That W. W. Sheppard, of this commission, be and he hereby is appointed as examiner and designated to receive and hear testimony and to take evidence in the proceeding.

By order of the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738.

ELMIRA, N. Y., *August 14, 1922.*

Met pursuant to notice, 2 o'clock p. m., at Room No. 21, Hotel Langwell, Elmira, N. Y.

Before: W. W. Sheppard, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq., Hartford, Conn., for the respondent.

Examiner SHEPPARD. We can begin now, Mr. Brindley, with the introduction of any testimony or the making of any motions that may be in order.

Mr. BRINDLEY. Mr. Examiner, it has been agreed between the chief counsel for the Federal Trade Commission and the respondent that the taking of testimony in this case might begin to-day at Elmira, N. Y., and further notice of further time has been waived by the respondent.

Examiner SHEPPARD. That is all right, Mr. Smith, is it?

Mr. SMITH. Entirely so.

Examiner SHEPPARD. All right.

Mr. BRINDLEY. A stipulation of facts in this case has heretofore been made in writing between W. H. Fuller, chief counsel for the Federal Trade Commission, and Thatcher Manufacturing Company by Herbert Knox Smith, its attorney. That stipulation agrees that

certain facts therein named may be taken as facts in this proceeding and considered by the Federal Trade Commission in lieu of testimony before the commission. Certain documents are attached to the stipulation and marked, respectively, "Exhibits A to Z–10," inclusive, and such exhibits are admitted to be true and correct copies respectively of the documents and records named in the stipulation. The stipulation may be referred to during this examination as "the stipulation" and the exhibits thereto attached may be referred to as "exhibits to the stipulation" and described by their respective numbers.

Mr. SMITH. That is quite satisfactory.

Mr. BRINDLEY. We will ask that Mr. Baldwin be sworn.

PLAINTIFF'S TESTIMONY.

FRANCIS E. BALDWIN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. BRINDLEY. Please state your name, residence, and occupation.

Answer. Francis E. Baldwin: Elmira, N. Y.: president of the Thatcher Manufacturing Co.

Question. How long have you been president of the Thatcher Manufacturing Co.?

Answer. Twenty-two years.

Question. And have you been president continuously in that time?

Answer. Yes, sir.

Question. When was the Thatcher Manufacturing Co. incorporated?

Answer. Well, there was a reorganization in January, 1900, and I was elected president at that time. It was incorporated prior to that, but there was a reorganization at that time.

Question. In what business is the Thatcher Manufacturing Co. engaged?

Answer. In the manufacture of milk bottles and milk-bottle caps.

Question. And how long has it been engaged in that business?

Answer. Well, it has been engaged in the manufacturing of milk bottles since 1906. Prior to then we were buying our bottles and selling them. We built a factory in 1905 and did not get to shipping out commercial bottles until 1906. Prior to that time we had also made and sold butter coloring and cheese coloring, but we dropped out of that.

Question. So that the manufacture of milk bottles began in 1906?

Answer. Yes, sir.

Question. And it has been engaged in manufacturing and selling milk bottles continuously since that time?

Answer. Yes, sir.

Question. And is now so engaged?

Answer. Yes, sir.

Question. What disposition is made of bottles manufactured by the Thatcher Manufacturing Co. after they are made?

Answer. They are sold by our salesmen to milk dealers and through jobbers to milk dealers.

Question. Where are your customers located?

Answer. All over the United States.

Question. What is the field of operation of the Thatcher Manufacturing Co. in the sale and distribution of milk bottles?

Answer. The entire United States, and we ship to England. We ship some to Australia—that is, not a large amount, but comparatively few—and we have shipped some to South Africa.

Question. The business in which the Thatcher Manufacturing Co. is engaged is manufacturing milk bottles and selling them and shipping them to purchasers in practically all the States and Territories of the United States?

Answer. Yes, sir; milk bottles and milk-bottle caps.

Question. When the Thatcher Manufacturing Co. began the manufacture of milk bottles, what system or plan was used?

Answer. I assume you are referring to the machine we used?

Question. Yes.

Answer. The Owens bottle machine.

Question. That was used by the Thatcher Manufacturing Co. at the beginning of its manufacture of milk bottles?

Answer. It was, yes, sir.

Question. What is that Owens bottle machine?

Answer. It is an automatic machine that gathers the metal and blows the bottle and turns it out a perfected bottle.

Question. It is, then, a machine for the manufacture of milk bottles by an entirely automatic process?

Answer. It is a machine for the manufacture of any bottle.

Question. Any bottle?

Answer. Yes, sir.

Question. Not limited to milk bottles?

Answer. No, it is used for all lines, but we have it for milk bottles.

Question. By whom is that machine made or produced?

Answer. It is made by the Owens Bottle Co., of Toledo, Ohio.

Question. Do you know what the organization of that Owens Bottle Co. is—whether it is a copartnership, association, or corporation?

Answer. A copartnership.

Question. Located, you say, at Toledo, Ohio?

Answer. Toledo is their main office.

Question. And is it the concern that sells or leases the Owens bottle machine?

Answer. Yes. They also manufacture—they have some 17 or 18 factories.

Question. And from it the Thatcher Manufacturing Co. secured the right to use the Owens machine?

Answer. Yes, sir.

Question. And how long did the Thatcher Manufacturing Co. use that machine in manufacturing milk bottles?

Answer. From 1905—we installed it—until the present time.

Question. And is your company still using them?

Answer. We are still using them, yes, sir.

Question. At the time the Thatcher Manufacturing Co. secured the right to use the Owens bottle machine were there any other automatic bottle machines on the market?

Answer. There was not.

Question. The Owens, then, was the first automatic bottle-making machine?

Answer. Yes, sir.

Question. What right did the Thatcher Manufacturing Co. secure from the Owens Bottle Co. for the use of that machine?

Answer. We arranged to secure the exclusive right to manufacture milk bottles in the United States.

Question. On that machine?

Answer. Yes, sir; on that machine.

Question. The right, then, was granted to the Thatcher Manufacturing Co. exclusively to use that machine?

Answer. Yes, sir; for milk bottles.

Question. For the manufacture of milk bottles?

Answer. Yes, sir.

Question. And no other company had the right to use it in the United States for manufacturing milk bottles?

Answer. No, sir.

Question. Until then—until the Owens bottle machine was produced, what was the method of making glass bottles?

Answer. There had come into the market a few years prior—but a few years prior—a semiautomatic machine whereby the metal was gathered by hand on a punty which took the place of the blowpipe—they gathered the metal and dropped it into a mold and then the machine finished the bottle by blowing it with compressed air and compressing it by pressure—making a ring on the neck of the bottle—the cap seat or what is commonly known as the finish of the bottle.

Question. The old original method of making glass bottles was what we called the hand process?

Answer. Yes, sir; the hand process.

Question. And subsequently there was produced the semiautomatic machine?

Answer. Yes, sir.

Question. Now, what was the Owens machine, compared with the hand process and the semiautomatic machine?

Answer. Well, the Owens machine was entirely automatic.

Question. Was it a successful machine for that purpose?

Answer. Yes, sir; a very successful machine.

Question. And at the time you secured it was it the first and only successful entirely automatic machine for making glass bottles?

Answer. At the time I secured it—we made the contract—we never made any bottles except experimentally and it was the first—the only machine that was making bottles successfully automatically.

Question. It did develop into that shortly after you acquired the use of it?

Answer. Yes, sir.

Question. Were you or not acquainted with the organization and operation of the Travis Glass Co.?

Answer. Yes, sir.

Question. Where did the Travis Glass Co. operate?

Answer. Their main office was at Clarksburg, W. Va.

Question. In what business was it engaged?

Answer. In the manufacture of milk bottles and some other bottles—water bottles, I believe.

Question. At what time?

Answer. Well, that I can not tell you just when the Travis Glass Co. was organized, but it was organized, I should say, in about 1907 or 1908. That is all guesswork.

Question. In what business was it engaged during the year 1919?

Answer. In the manufacture of milk bottles and water bottles, etc.

Question. In what field did it operate?

Answer. All over the United States.

Question. It was engaged in the manufacture, sale, and transportation of milk bottles, with purchasers in practically all the States of the Union?

Answer. Yes, sir.

Question. And during that time was it or not in competition with the Thatcher Manufacturing Co.?

Answer. It was.

Question. Were you acquainted with the organization and operation of the Essex Glass Co. during the year 1919?

Answer. Yes, sir.

Question. In what business was it engaged?

Answer. In the manufacture of milk bottles.

Question. In competition with whom?

Answer. With all manufacturers of milk bottles, including the Thatcher Manufacturing Co.

Question. And was it also in competition with the Travis Glass Co.?

Answer. Yes, sir.

Question. And what was the field of operation of the Essex Glass Co.?

Answer. I do not know whether they went to the extreme West or not—the Central West and East they covered.

Question. But it manufactured and sold bottles in many States of the United States?

Answer. Yes, sir.

Question. And shipped to purchasers in the United States?

Answer. Yes, sir.

Question. Now, during the year 1919 and prior thereto were you acquainted with the organization and operation of the Lockport Glass Co.?

Answer. Yes, sir.

Question. In what business was it engaged?

Answer. They had in 1919, and for a few years prior, been engaged in the manufacture of milk bottles.

Question. And what was its field of operation?

Answer. The Central West and the Eastern States. They did not go into the Central West much—more in the Eastern States.

Question. But they sold and shipped milk bottles to purchasers throughout many States of the United States?

Answer. Yes, sir.

Question. In competition with whom?

Answer. With all manufacturers of milk bottles, including the Thatcher Manufacturing Co.

Question. Now, during the year 1919, were you acquainted with the organization and operation of the Woodbury Glass Co.?

Answer. Yes, sir, to a certain extent.

Question. In what business was the Woodbury Glass Co. engaged?

Answer. They were engaged in the business of manufacturing what is known as condiment ware—that is, the glass container in which fruit or the extract of fruit is put, such as vinegar bottles, grape-juice bottles, ketchup, chili sauce, fruit jars, etc.

Question. Do you know the field of its operation?

Answer. Well, largely by hearsay—I should say they covered the country as well as they could.

Question. Did it ship glass bottles manufactured by it to purchasers in the various States of the United States?

Answer. Yes, sir. I am so informed.

Question. And during the year 1919 and 1920 were you acquainted with the organization of the J. T. & A. Hamilton Co.?

Answer. Yes, sir.

Question. Where was that company located?

Answer. Pittsburgh, Pa.

Question. In what business was it engaged?

Answer. In the general bottle business.

Question. Do you know whether or not the J. T. & A. Hamilton Co. manufactured and sold milk bottles?

Answer. To a limited extent.

Question. To what extent did they manufacture and sell milk bottles?

Answer. I should say—this is an estimate, of course—but I should say anywhere from twenty-five to thirty thousand gross.

Question. Did they sell milk bottles manufactured by them to customers in several States of the United States?

Answer. Well, as to several, yes. I think they sold in two or three States.

Question. They were engaged in selling milk bottles to customers in several States to a certain extent?

Answer. Yes, sir.

Question. And were they in competition with the Thatcher Manufacturing Co. and other companies?

Answer. Yes, sir.

Question. What method was used by the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and the J. T. & A. Hamilton Co. for manufacturing milk bottles in the year 1919?

Answer. All save the Hamilton company used both the semiautomatic and the Hartford-Fairmont.

Question. Explain what you mean by the Hartford-Fairmont process?

Answer. That is the name of an automatic machine gotten out by the Hartford-Fairmont Co.

Question. Where is it located?

Answer. Hartford, Conn.

Mr. SMITH. That is the business office of it?

Answer. They are incorporated in New York.

Mr. BRINDLEY. When was the Hartford-Fairmont machine produced and put on the market?

Answer. I could not tell you.

Question. Approximate it if you can?

Answer. I should say—this is purely guesswork—in 1914–1913.

Mr. SMITH. That is a little bit early.

Examiner SHEPPARD. Refresh his memory.

Mr. SMITH. 1919 was the first license ever granted—that is, in the milk bottle business—1916.

Mr. BRINDLEY. The Hartford-Fairmont bottle machine, then, was produced subsequently to the Owens?

Answer. Yes, sir.

Question. And prior to 1919?

Answer. Yes, sir.

Question. The Hartford-Fairmont machine was also a successful automatic machine for the making of glass bottles?

Answer. Yes, sir.

Question. And it is still in use?

Answer. Yes, sir.

Question. Now, I understand you to say that the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and the J. T. & A. Hamilton Co., in 1919, and for some time prior thereto, used the Hartford-Fairmont machine in the manufacture of milk bottles?

Answer. Well, but a short time prior thereto. I think that they did not get in operation until 1917 or 1918.

Mr. SMITH. 1917 was the first year we ever got any royalties on them.

Mr. BRINDLEY. So, in 1919, the Thatcher Manufacturing Co. was engaged in manufacturing milk bottles with the Owens bottle-blowing machine?

Answer. Yes, sir.

Question. And at that time the Travis Glass Co., Essex Glass Co., Lockport Glass Co., and the J. T. & A. Hamilton Co. were engaged in manufacturing milk bottles with the Hartford-Fairmont machine?

Answer. They were, and also with semiautomatic machines. I am not sure that the J. T. & A. Hamilton Co. were working any semiautomatics.

Question. In 1919, how many successful processes were there for the manufacture of glass bottles by semiautomatic machines?

Answer. I could not answer that question. Quite a good many.

Question. Were there any entirely automatic glass bottle-making machines in use in 1919 except the Owens machine and the Hartford-Fairmont machines?

Answer. Well, there were other machines being developed at that time, but whether they were operating at all or not, I do not know. There were the Howard, the Miller, the O'Neill, and then there was a National and the Federal. I mean the Federal instead of the National. Then they had the Graham.

Question. Were these machines you have just named automatic bottle-making machines devised and sold as a complete unit?

Answer. They used the flow process—they put up a machine and let the metal flow into the mold in taking place of the hand gathering which made it automatic.

Question. In other words, the use of two machines made an automatic process?

Answer. Well, there is not much of a machine to the Hartford-Fairmont. It is simply a spout with the metal coming down—it flows down into the molds.

Question. Is it or not a fact that in 1919 there were only two entirely successful automatic machines for manufacturing glass bottles which were made and sold or leased as a complete unit?

Answer. Well, as a complete unit, yes. That is true to-day.

Question. Now, what is true?

Answer. That they are the only two that are complete units.

Question. That is, the Owens machine and the Hartford-Fairmont?

Answer. Yes. I do not know whether I am mistaken as to that. I guess the O'Neill and the Miller do have their own machines.

Question. But that was true, at least, during the year 1919?

Answer. Yes, sir.

Question. Do you know a gentleman named I. T. Axton?

Answer. Yes, sir.

Question. Where does he live?

Answer. Louisville, Ky.

Question. When did you first become acquainted with him?

Answer. The first time I met him was in the early part of the year 1919.

Question. Did that meeting have any connection with the Thatcher Manufacturing Co. and the other companies here named?

Answer. To a certain extent, yes, sir.

Question. What was the occasion of that meeting and what transpired?

Answer. The meeting was at the Iroquois Hotel, in Buffalo, of the Lockport Glass Co.—the representatives of it—Mr. Luce, Mr. Woodward, and Mr. Keep; Mr. Travis, of the Travis Glass Co., and Mr. Axton. They went to the Iroquois Hotel. They telephoned to me and asked me to come up there and I did so. They had been discussing the merging or forming a combination of these companies that were using the Hartford-Fairmont machine and they wanted me to advance the money to buy out the Essex Glass Co. and put their property in with theirs and form a combination at once. That was the matter that was discussed that night.

Question. Do you remember in what month that meeting occurred?

Answer. No, sir; I do not. I am quite sure it was in the year 1919.

Question. Do you remember whether or not anything was said at that meeting about anyone having options on the stock of certain glass companies?

Answer. There was not anything said at that time.

Question. Did you subsequently learn anything about options on the stock?

Answer. Hold on. Excuse me. They did tell me that they had options on the stock of the Essex Glass Co. and that was what they wanted me to put up the money—to buy them out.

Question. That was the occasion of your first meeting with them?

Answer. Yes, sir.

Question. Now, what did you subsequently learn about options on the stock of certain companies?

Answer. Well, some little time afterwards Mr. Axton came to me—of course, there was considerable in between—and said that he was unable to unite these companies, as he expressed it; each one of them wanted all and they could not have all, and, therefore, that he had spent a great deal of time and money, and the thing looked as though he was out. He said, "I have a cash option on all these parties ——"

Question. What parties?

Answer. The Essex Glass Co., the Lockport Glass Co., the Travis Glass Co., and the Woodbury Glass Co., and of the milk-bottle business of the J. T. & A. Hamilton Co., and asked me if I would consider buying it. I told him I would have to think the matter out, first.

Question. Do you remember whether or not at that time he showed you his options or contract in reference to the stock of his various companies?

Answer. He did not.

Question. Did you afterward see these options or contracts?

Answer. Yes, I think I saw them afterwards, but I do not remember that I saw them, however, until the deal went through.

Question. Well, what subsequently occurred between you and Mr. Axton in reference to the stock transaction?

Answer. I told Mr. Axton that I would have to investigate and see whether it was worth the amount they asked—whether the Owens people would be willing for me to use another machine and also, another thing, that, first, whether I would get the money to pay for them, and so I started out to investigate that matter.

Question. And what subsequently transpired between you and Mr. Axton?

Answer. It subsequently transpired that Mr. Axton was employed by the Sterling Glass Co. to see if he could get these people to take a little less for their options than they had named and he succeeded in getting some reduction.

Question. Was it finally agreed between yourselves and associates that you would own the options held by Mr. Axton?

Answer. Well, whom do you mean by "my associates?"

Question. Well, yourself, Mr. Libby, Mr. Ford, and anyone eles associated with you in the transaction.

Answer. Mr. Libby and Mr. Ford and myself; yes, sir.

Question. It was agreed, then, that you would purchase the stock of these companies?

Answer. Yes, sir.

Question. And that included the stock in the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., the Woodbury Glass Co., and the milk-bottle business in the Hartford-Fairmont license and machine of the J. T. & A. Hamilton Co.?

Answer. Yes; and they wanted to know what the Thatcher Manufacturing Co. would take for its interest to go into another company.

Question. When and where was the deal for the purchase of the stock in these various companies consummated?

Answer. At the Guaranty Trust Co.

Question. In what place?

Answer. New York City, the 27th and 28th of August, 1919. One of those dates.

Question. Tell us how the transaction was completed?

Answer. Do you mean as to our getting our money, etc.?

Question. I do not care about the details of your getting the money, you know.

Answer. That was very important.

Question. It is up to you. Well, if you do not object, let me lead a little more.

Answer. Do you want me to tell about the money matter?

Question. No. Let me just ask this question: On or about August 28, 1919, you and your associates directed Mr. Axton to meet you at the office of the Guaranty Trust Co., in the city of New York, did you not?

Answer. Well, Mr. Axton was there, but the representatives of each of these companies was there with their stock.

Question. In other words, Mr. Axton was there and the representatives at least or stockholders of the other companies were also at the Guaranty Trust Co., of New York City?

Answer. Yes, sir.

Question. Now, it had been arranged by you and your associates that you would purchase the stock there—at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you succeeded in raising the necessary funds?

Answer. Yes, sir.

Question. Now, tell us how the transaction actually occurred—so far as the purchase and transfer of the stock was concerned.

Answer. The stock was transferred in blank to the Guaranty Trust Co. and held by them as collateral security on the notes which we had discounted there on behalf of the Sterling Glass Co. and these people were paid their money and the stock passed forward to the Guaranty Trust Co. and kept by them.

Question. On the 28th day of August, 1919, did you and Edward D. Libbey and William Ford execute notes to the Guaranty Trust Co., of New York, to secure certain money?

Answer. Yes, sir; I think that is the correct date.

Question. Do you recall now the amount of the note executed by you?

Answer. $640,000 or $650,000; the note I made was $650,000.

Question. That was the note made by you, individually, as maker?

Answer. Yes, sir.

Question. Describe the notes made by the other parties at the same time.

Answer. Mr. Libbey made a note and signed it as maker for $450,000 and Mr. Ford made and signed a note as maker for $480,000.

Question. Now, yourself, Mr. Libbey, and Mr. Ford each signed a note as maker for the respective amounts you have named?

Answer. Yes, sir.

Question. And then what did each one of you do with reference to the notes made by the others?

Answer. We indorsed them.

Question. So, then, the note made by you was indorsed by Mr. Ford and Mr. Libbey?

Answer. Yes, sir.

Question. And the other two notes were treated similarly?

Answer. Yes, sir.

Question. So that the three of you were bound on all three notes?

Answer. Yes, sir.

Question. What was the total of the notes given by you three gentlemen to the Guaranty Trust Co. on that date?

Answer. $1,610,000.

Question. You have referred to the Sterling Glass Co. heretofore. That, as shown by the stipulation on file, was a corporation organized a short time prior to the 28th day of August, 1919?

Answer. Yes, sir.

Question. Do you remember how much stock the Sterling Glass Co. had issued?

Answer. $500,000.

Question. Who held that stock?

Answer. Mr. E. D. Libbey held $250,000; Mr. Mandeville held five shares——

Question. You need not go into the details of that.

Answer. Some stock was held——

Question. And the balance of it was held by whom?

Answer. By Mandeville, Waxman & Personius, and the balance by Thatcher Manufacturing Co.

Question. Practically $250,000 of the stock of the Sterling Glass Co. was held and owned by Mr. Libbey?

Answer. Absolutely, yes.

Question. And the other half by the Thatcher Manufacturing Co. and certain of its agents or employees?

Answer. Quite so.

Question. The capital stock of the Sterling Glass Co. was issued for cash, was it not?

Answer. Yes, sir.

Question. And how much money was thus raised by the sale of stock of the Sterling Glass Co. and the execution of the three notes to the Guaranty Trust Co.?

Answer. $2,110,000.

Question. And so on the 28th day of August, you and your associates in the purchase of the companies heretofore named had at your disposal how much money—August, 1919?

Answer. We had $2,110,000.

Question. Now, what disposition was made of that money that day, or the greater part of it?

Answer. We paid for the stock in the different companies named.

Question. The stock was secured from Mr. Axton and the stockholders or representatives of the stockholders?

Answer. The stock was secured from the representatives of the stockholders.

Question. On the 28th day of August, 1919, all the stock in the Travis, Essex, Lockport, and Woodbury Glass Co.'s was at New York in one of the offices of the Guaranty Trust Co., was it not?

Answer. Yes, sir.

Question. And Mr. Axton had assembled the stockholders, who had this stock with them ready for transfer, assignment, or delivery, in one of the offices of the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you and your associates met in another office of the Guaranty Trust Co.?

Answer. I think so; yes, sir.

Question. And so the money raised by the sale of the stock in the Sterling Glass Co. and on the three notes given by you and Mr. Libbey and Mr. Ford to the Guaranty Trust Co., or the larger part of that money, was used to purchase the stock in the four companies named.

Answer. Yes, sir.

Question. The amount necessary to purchase this stock was paid to the respective stockholders that day?

Answer. Yes, sir.

Question. And the stock indorsed in blank by the various stockholders?

Answer. Yes, sir.

Question. Now, what became of the stock after it was indorsed and delivered by the various stockholders in the four companies?

Answer. It was held by the Guaranty Trust Co. as collateral security for these notes.

Question. After the purchase of this stock did you and Mr. Libbey and Mr. Ford and the Sterling Glass Co. enter into a written agreement in reference to the transaction?

Answer. Yes, sir.

Question. Examine the document which I hand you and see if you can identify it. Can you identify it?

Answer. Yes, sir; Mr. Mandeville could identify it better than I could.

Question. What is it?

Answer. It is a stipulation entered into between Mr. Mandeville for the Thatcher Manufacturing Co. and Mr. W. H. Fuller, chief counsel for the Federal Trade Commission.

Question. You have examined this stipulation and the exhibits attached to it?

Answer. I have.

Question. Now, you have just stated that after the stock transaction you and Mr. Libbey and Mr. Ford and the Sterling Glass Co. entered into a written contract in reference to the transaction?

Answer. Yes, sir.

Question. And Exhibit G, attached to the stipulation you have just examined, is a copy of that contract?

Answer. Yes, sir.

Question. After the purchase of the stock in August, 1919, what disposition, if any, was made of the company whose stock was purchased?

Answer. What immediate disposition of the stock?

Question. No, sir. Of the companies themselves—in reference to their management, operation, and control?

Answer. They continued their operation under their own management.

Question. How long did that operation continue?

Answer. Until the 1st of January.

Question. What year?

Answer. 1920.

Question. And then what occurred?

Answer. Then it was largely under their own management, but it was directed—I directed it from Elmira.

Question. The direction and operation of the company, then, on the 1st of January, 1920, was brought to Elmira, N. Y.?

Answer. Yes, sir.

Examiner SHEPPARD. Have the records show what four companies these were. I have five companies here—Travis, Essex, Lockport, Woodbury, and the J. T. & A. Hamilton Co.—and the testimony shows four. Which four? Make that a little plain, for the record.

Mr. BRINDLEY. In August, 1919, what stock did you and Mr. Ford and Mr. Libbey and the Sterling Glass Co. purchase in glass-bottle manufacturing concerns?

Answer. We bought the stock of the Woodbury Glass Co., Travis Glass Co., the Lockport Glass Co., and the Essex Glass Co.

Question. The four companies?

Answer. Yes, sir.

Question. Now, at or about the same time you had a transaction concerning the J. T. & A. Hamilton Co.?

Answer. Yes, sir.

Question. There was not any stock transaction, though, so far as the Hamilton company was concerned, was there?

Answer. No, sir.

Question. What was it that was purchased from the J. T. & A. Hamilton Co.?

Answer. We purchased their license of the Hartford-Fairmont Co. and machine equipment. We also purchased the milk-bottle business—the limited amount of their milk-bottle business.

Question. The J. T. & A. Hamilton Co. was engaged, to a certain extent, in manufacturing and selling milk bottles?

Answer. Yes, sir.

Question. And they used to a certain extent the Hartford-Fairmont machine?

Answer. For that purpose, yes, sir.

Question. Now, your transaction with the J. T. & A. Hamilton Co. was that you, or the Thatcher Manufacturing Co., simply bought their milk-bottle business and their Hartford machine and license?

Answer. Yes, sir.

Question. You did not buy any stock of the Hamilton company?

Answer. No, sir.

Question. And, so far as you know, they are still in business to-day?

Answer. I know they are in business to-day, making milk bottles, among other things.

Question. But not with the Hartford-Fairmont machine?

Answer. Yes, sir, with the Hartford-Fairmont machine.

Mr. BRINDLEY. Is that clear, Mr. Examiner?

Examiner SHEPPARD. Yes. Go right ahead.

Mr. BRINDLEY. Mr. Libbey and Mr. Ford went into this transaction with you in the hope of bringing in other outside interests, I believe?

Answer. Yes, sir, with that expectation.

Question. The contract you have mentioned, which is attached to the stipulation as Exhibit G, mentioned that they might retire under certain contingencies?

Answer. Yes, sir.

Question. So, the bringing in of the other outside interests was not consummated?

Answer. It was not; no, sir.

Question. And then did Mr. Libbey and Mr. Ford give notice that they would retire from the transaction?

Answer. They did.

Question. In accordance with the contract?

Answer. Yes, sir.

Question. And in pursuance of your agreement with these gentlemen they were subsequently released from all obligations in the stock transaction?

Answer. Yes, sir. Well, they were released from their liability upon the notes and the whole transaction. Yes, sir.

Question. In accordance with the previous agreement?

Answer. Yes, sir.

Question. When the notes of yourself and Mr. Libbey and Mr. Ford were executed to the Guaranty Trust Co., you have stated, I believe, that the stock of the four companies was attached to these notes as collateral security, as described in the contract mentioned in the stipulation as Exhibit G?

Answer. They were held as collateral security. I don't know whether they were attached.

Question. They were held by the Guaranty Trust Co. as collateral security for these notes?

Answer. Yes, sir.

Question. What became of that stock subsequently?

Answer. The companies were all dissolved.

Question. Well, prior to that time, was there any change in the record title of the stock in the four companies?

Answer. I think there was. I may be mistaken, but as I remember it there was a small portion of it—some was transferred to myself and I was made president of those companies. Some was transferred, I think, to Mr. Mandeville and some of it to Mr. Collins.

Question. Do you remember the details in reference to that transfer of the stock in the four companies?

Answer. No. I do not remember the details of it. I know it was talked of and I know it was done, and that was part of the transaction of having the companies dissolved.

Question. Who knows the details of that reissue of stock and can tell us about it?

Answer. Mr. Mandeville could tell you better about that than anybody else.

Question. Was he in on all of that?

Answer. He was.

Question. Who paid the notes to the Guaranty Trust Co. on August 28, 1920, given by yourself, Mr. Libbey, and Mr. Ford?

Answer. Well, they were paid from the proceeds of the sale of the bonds.

Question. What bonds?

Answer. Bonds issued by the Thatcher Manufacturing Co.

Question. Do you know the date when that was done?

Answer. It was done in August, 1920, I should say along about the 20th; that is my memory of it. I remember giving a check for $1,635,000 and some cents—that was quite an event in my life.

Question. You, of course, can remember that feature of the transaction?

Answer. Yes, sir.

Question. Who was with you when the payment of the notes was made?

Answer. Mr. Mandeville?

Question. Where was it done?

Answer. At the Guaranty Trust Co.

Question. At New York City?

Answer. Yes, sir.

Question. What disposition was then made of the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. when you paid the notes?

Answer. I could not tell you; I do not remember.

Question. Do you remember whether or not it was delivered to either you or Mr. Mandeville?

Answer. I assume they were, but I do not remember that they were delivered to me.

Question. What became of the stock of the Travis Glass Co. ultimately?

Answer. The company was dissolved.

Question. What became of the assets of that company?

Answer. They were purchased by the Thatcher Manufacturing Co.

Question. And transferred to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And does the Thatcher Manufacturing Co. own them to-day?

Answer. It does.

Question. Now, what disposition was made of the assets and stock of the Lockport and Essex Glass Cos.?

Answer. The Thatcher Manufacturing Co. bought the assets and the corporation was dissolved in both cases.

Question. The Travis, Essex, and Lockport Glass Cos., then, transferred and conveyed all their assets, rights, and privileges to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And the companies were dissolved?

Answer. Yes, sir.

Examiner SHEPPARD. How about the Woodbury company?

Answer. That continued under the same organization.

Mr. BRINDLEY. The Woodbury Glass Co. is still in existence?

Answer. It is; yes, sir.

Question. And who owns the stock of that company?

Answer. The Thatcher Manufacturing Co. owns it now; that is, there is some stock held by individuals for offices. That is all.

Question. But the Thatcher Manufacturing Co. is really the owner of the stock of the Woodbury Glass Co.?

Answer. Yes, sir; the common stock. The preferred stock is held by individuals.

Question. Can you tell us, without reference to your books and records, what was the output in milk bottles of the Thatcher Manufacturing Co. for the years 1917, 1918, 1919, and 1920?

Answer. No, sir.

Question. Could you secure a statement to that effect readily from your records?

Answer. Yes, sir. A certified accountant's report; that will show that for each year.

Question. In 1919 the Thatcher Manufacturing Co. had the exclusive right to use the Owens bottle-making machine in the United States for the manufacture of milk bottles, did it not?

Answer. Yes, sir.

Question. Did the Thatcher Manufacturing Co., in addition to having the exclusive license to use the Owens bottle machine in making milk bottles in the United States, have the right to all improvements made on that machine?

Answer. It did, up to October, 1920.

Question. And also the exclusive right to use any new machines at any time owned or acquired by the Owens Bottle Machine Co.?

Answer. Yes, sir.

Question. Then, as a result of the transaction with Travis, Essex, Lockport, and the Hamilton companies, the Thatcher Manufacturing Co. also secured the exclusive right in the United States to use the Hartford-Fairmont machines in manufacturing milk bottles, did it not?

Answer. Yes, sir.

Question. And in the transaction with the Woodbury company, it secured a nonexclusive license to use the Hartford-Fairmont machines in making condiment bottles and the bottles mentioned in the Woodbury license?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. still owns those rights?

Answer. Yes, sir.

Examiner SHEPPARD. I have a number of questions to ask Mr. Baldwin, but if you want to cross-examine him first, you may proceed, Mr. Smith.

Mr. SMITH. I will be glad to have you do it.

Examiner SHEPPARD. Mr. Baldwin, how long did you say you have been president of the Thatcher Manufacturing Co.?

Answer. About 22 years.

Question. And that company was a coropation, wasn't it?

Answer. Yes, sir.

Question. Organized under the laws of what State?

Answer. New York State.

Question. I wish you would name the companies—I mean the officers of the Thatcher Manufacturing Company.

Answer. The main office is in New York——

Question. No. I mean the officers—president, vice president, and so on.

Answer. The president is myself——

Question. Yes?

Answer. The vice president is Mr. H. C. Mandeville; Mr. R. W. Niver is vice president, also, and general superintendent.

Question. Yes?

Answer. Mr. Casper G. Decker is secretary, and Mrs. F. H. Mills is treasurer.

Question. And were they the persons who made application for the charter for the corporation under which you are now?

Answer. Yes.

Question. They are your recent officers, are they?

Answer. Well, we reincorporated, Mr. Examiner, after we bought up this matter and issued these bonds.

Question. Well, I want to know who were your officers during this merger—during this time?

Answer. The officers prior to this were myself as president; Mr. R. W. Niver, vice president and general manager; Mr. Decker, secretary, and Mrs. F. H. Mills, treasurer. Then we—I do not remember just when—we amended our by-laws and had two vice presidents, and Mr. Mandeville was elected vice president.

Question. I see. So, from 1905 to 1919 you did business here in the city alone, without having any other offices at other places?

Answer. Well, we had branch offices.

Question. Tell us now where were they.

Answer. We had one in New York——

Question. New York City?

Answer. Yes. Chicago, Philadelphia, and Boston.

Question. Did you have any out West?

Answer. Chicago.

Question. No farther West?

Answer. No farther West; no.

Question. What was the amount for which your company was incorporated, initially?

Answer. $1,000,000 common stock and $500,000 of preferred.

Question. $1,000,000 common and $500,000 preferred; $1,500,000?

Answer. Yes.

Question. You have a plant here in Elmira, N. Y.?

Answer. Yes, sir.

Question. Now, at what other points have you plants, Mr. Baldwin, for the manufacturing of bottles?

Answer. Of the old Thatcher company we had one at Kane, Pa., which we have now abandoned, and another at Streator, Ill.; then of those we have purchased we have one at Lockport, N. Y.; one at Dunkirk, N. Y.; one at Parkersburg, W. Va.; one at Clarksburg,

W. Va.; one at Cedar Grove, W. Va., which was completed and built after we bought it; one at Mount Vernon, Ohio; one at Streator, Ill.; and then there is the Woodbury Glass Co. at Manchester, Ind.

Question. Which was taken over at the merger?

Answer. Yes, sir.

Question. Now, so you have plants now in operation at Elmira, Streator, Clarksburg, and Cedar Grove, W. Va., and Mount Vernon, Ohio, and at Lockport, N. Y., and where?

Answer. And Dunkirk, N. Y., and Parkersburg, W. Va. They are in operation now.

Question. Of those that you have mentioned, which ones have been discontinued?

Answer. Well, only one that has been formally discontinued; that is the Kane plant, but there will be a factory down if there is one furnace in it, only, for the rebuilding of the furnace.

Question. So that will be in operation again?

Answer. Yes; it hasn't been abandoned.

Question. Now, the Travis Glass Co. Where is that located?

Answer. The Travis Glass Co. had their headquarters at Clarksburg, W Va., and they had started a factory at Cedar Grove, W. Va.

Question. Was that company organized under the laws of West Virginia?

Answer. I think it was.

Question. Do you know the capital stock it was organized with?

Answer. I do not, but I think that it was $100,000.

Question. In what year, do you remember?

Answer. I do not remember the year.

Question. Now, the Essex company. Where is that located?

Answer. Their main office was at Mount Vernon, Ohio.

Question. And was that organized under the laws of Ohio?

Answer. I think it was.

Question. Do you know the capital stock at the time of organization?

Answer. No; but I think their capital stock was increased to $200,000.

Question. Now, the Lockport Glass Co.

Answer. Their headquarters were Lockport, N. Y., and they were organized under the laws of New Jersey.

Question. Do you know their capital stock at the time of incorporation?

Answer. They started several years before and started making fruit jars and miscellaneous wares, and I think their capital stock was increased. At the time we bought them out they had, I think, $200,000 of common stock and a certain amount of preferred.

Question. I want to get to that a little bit later. If you knew—if your knowledge allowed you to state the amount of stock at the time it was incorporated was what I wanted?

Answer. I could not state that.

Question. Now, the Woodbury Glass Co. is a corporation of Indiana, is it not?

Answer. Yes, sir.

Question. Under the laws of the State of Indiana?

Answer. Yes, sir.

Question. And you don't know the capital stock of that company, do you?

Answer. It was $200,000 of common stock and there is now about $100,000 of preferred.

Question. I see. Now, Mr. Baldwin, you have testified that in accordance with an agreement entered into by Mr. Axton, who represented the stockholders of the Travis Glass Co., the Essex Glass Co., the Lockport and the Woodbury companies in 1919, you and your associates took over the stock of these companies, through an arrangement with the Guaranty Trust Co., of New York city. That is correct, isn't it?

Answer. Yes, sir; that is correct.

Question. Now, I want you to tell me what was the amount of stock taken over by your company or by you and your associates from the Travis Glass Co.—the amount of stock.

Answer. Five hundred shares.

Question. That is the Travis Glass Co.?

Answer. Yes; five hundred shares of the common stock of Travis Glass Co.

Question. Any preferred?

Answer. There was no preferred stock in that company.

Question. So all you got of the Travis Glass Co. was 500 shares of the common stock?

Answer. Yes, sir.

Question. Give me the same information about the Essex Glass Co.?

Answer. One thousand shares of common stock.

Question. Any preferred stock in that company?

Answer. No preferred stock in that company.

Question. All right. Now in the Lockport company?

Answer. Twelve hundred and sixty-two shares of common stock.

Question. Any preferred?

Answer. One hundred and ten shares of preferred stock, and we also took $89,000 of par value of bonds and $117,000 of notes of the company.

Question. Now, about the Woodbury company.

Answer. There were 2,000 shares of the Woodbury company——

Question. Common stock?

Answer. Common stock. We did not purchase the preferred stock.

Question. So you only acquired the common stock in that company?

Answer. That is all.

Question. Do you still own the common stock in it?

Answer. Yes, sir.

Question. You don't own any preferred in that?

Answer. We own five shares of preferred stock in that.

Question. Now, Mr. Baldwin, I want to ask you something about the Sterling Glass Co. You and your associates petitioned the authorities of New York for the incorporation of that company?

Answer. Yes, sir.

Question. Can you tell me who were the petitioners?

Answer. The signers of it were Hubert C. Mandeville, Leo Waxman, Ely W. Personius, and William P. Rodgers.

Question. And what was the amount requested for the capital stock?

Answer. $600,000.

Question. What was the purpose of the formation of the Stirling Glass Co., as requested in the petition?

Answer. To manufacture glass and glassware of any and all kinds and description; to manufacture such machinery and appliances as are or might be useful in connection with the preparation of glassware; to produce, as opportunity offers, whatever crude materials as are necessary for the manufacture of glass; to buy such lands and erect such buildings as are needed for the purpose of carrying on the business of the corporation; to sell and dispose of the same as authorized by law; to buy, own, and sell the plants of other companies heretofore carrying on a similar business; to buy, own, hold, sell, exchange, underwrite, pledge, and deal in stocks, bonds, mortgages, trust receipts, debentures, and other securities of corporations, both domestic and foreign, engaged in a similar business; to apply for, obtain, purchase, or otherwise acquire and to register, hold, own, use, sell, or otherwise dispose of any and all trade-marks, trade names, processes, formulae, trade secrets, inventions, and devices of all kinds whether secured under Letters Patent of the United States or of any foreign country; and to repair, manufacture, buy, sell, import, export, and generally deal in and with glass and glassware and whatever crude materials as are necessary for the manufacture thereof.

Question. Quite a broad charter?

Answer. It was.

Question. Where was the Sterling Glass Manufacturing Co. to be located?

Answer. Its place of business—principal place of business—was here.

Question. Was it ever erected or did it ever function?

Answer. No, sir.

Question. It never bought any machinery or established any physical plant?

Answer. Except as it bought these plants—the stock in these plants.

Question. The Sterling Glass Co. never functioned, then, as a real manufacturing plant, did it?

Answer. No, sir.

Question. How long was it in existence?

Answer. I think all these companies were dissolved along about in June, 1920, or July. The records here show when they were dissolved.

Question. I want the date of the incorporation of the Sterling Glass Co., if you can give it to me from memory.

Answer. It should be right here in the stipulation. The application was sent the 23d day of August, 1919.

Question. And that was a week or so before the taking over of these three other companies?

Answer. Yes, sir.

Question. Mr. Baldwin, I want to have you tell me what connection, if any, Mr. Axton had with the Travis, Essex, Lockport, or Woodbury companies.

Answer. He was president of the Woodbury company and was seeking to merge all these companies together.

Question. He obtained the options on the stock of the Travis, Essex, Lockport, and Woodbury companies before he came to you with the proposition, did he?

Answer. That was obtained. He didn't come to me first with the proposition. The Lockport Glass Co.—that is, the members of that company—telephoned me and they wanted to buy out the Essex Glass Co. and buy out the J. T. & A. Hamilton Co.

Question. That was the Lockport company?

Answer. Yes. That is, they wanted to do that and go on with this merger between themselves and Travis and they wanted me to put up $710,000. I declined to do it.

Question. Well, then, Mr. Axton fell down on his original proposition and then met you?

Answer. They worked after I declined to do that, they worked it, trying to finance their proposition and they could not get together. Finally he came to see me several times, and one time he came and wanted me to take $500,000 of second preferred stock. Again I declined. Finally he came to me and told me that the whole thing had fallen down and he was out his time and money he had put into it and wanted to know if I would consider buying it. I did not know at that time that they had a cash option on anything but the Essex and the J. T. & A. Hamilton business and I then took the matter up. Mr. Libbey thought there was an opportunity to get together a big proposition and form a big company and have that company take over the Thatcher Manufacturing Co. That was the original plan.

Question. Who is this Mr. Libbey?

Answer. He is president of the Owens Bottle Co.; president of the Libbey-Owens Sheet Glass Co.; he is president of the Libbey Cut Glass Co. and the Libbey Cut Glass Co. of Toledo. He is a man of large means.

Question. So, he is president of the company from which your company obtains its machines?

Answer. Yes, sir.

Question. Your company—the Thatcher Manufacturing Co.—has for some years past, before the merger or the taking over of the Travis, Essex, Lockport, and Woodbury companies, done a considerable business in the sale of milk bottles in interstate commerce—all over the United States, haven't you?

Answer. Yes, sir.

Question. Do you know what percentage of the bottle business was done by your company—I mean the total output—I mean the total, Mr. Baldwin, of the whole bottle business in the United States. What part of it was your company doing prior to the merger?

Mr. SMITH. You mean milk bottles?

Examiner SHEPPARD. Sure. Milk bottles, entirely. If you know that I would like to get it.

Answer. I do not know because I do not know just what the others did, but I think it is safe to say we were doing from 40 to 45 per cent.

Question. That was up to August, 1919?

Answer. Yes, sir.

Question. Now, after you and your associates, through the business deal we have just spoken of, acquired the other four companies here that have been mentioned—Travis, Essex, Lockport, and Woodbury——

Answer. Well, the Woodbury, of course, had nothing to do with milk bottles.

Question. That is right. The question should read Travis, Essex, and Lockport. Of course, the acquisition of these three companies greatly increased your output and your sales?

Answer. It did increase it, yes, sir; after while.

Question. Now, what percentage of the total milk-bottle business in the United States in 1920 was done by your concern, including the business of the merger?

Answer. I could not say as to how much, but I think I am safe in saying that it was probably about 70 per cent.

Question. Seventy per cent?

Answer. I should think so. We kept our factories running better than our competitors did.

Question. Do you make sales of your milk bottles through traveling salesmen?

Answer. Yes, sir.

Question. And do they travel from your branch offices or do they get their directions from your home office at Elmira?

Answer. They get all their directions from the home office at Elmira. There are some that travel out from branch offices, but they mostly get their directions from the home office at Elmira.

Question. Do you ship bottles to your various plants throughout the country?

Answer. Yes, sir.

Question. Now, the taking over of the three companies—the Travis, Essex, Lockport—and the Woodbury companies, that was included in this merger?

Answer. Yes; it was included in the purchase. It was not really a merger.

Question. That was financed by the $50,000 that was acquired from the Stirling Glass Co. and the hypothecated stock of the various companies?

Answer. As security for the notes we gave.

Question. As security for the $1,600,000?

Answer. $1,610,000.

Question. How long a time was the note given by you and Messrs. Libby and Ford to run—what was the duration of the notes?

Answer. The note was drawn upon demand, but the Guaranty Trust Co. agreed to carry it for a year.

Question. And you took up the note by the issuing of bonds, as you have stated?

Answer. Yes, sir.

Question. You have a great number of stockholders in the Thatcher Manufacturing Co.?

Answer. Quite a good many; yes, sir.

Question. What is your stock worth on the market now?

Answer. Well, we have issued a "no-par" common stock and the preferred stock is $100 a share. Owing to the fact that the people have a right to transfer their bonds that they have into common

stock, it practically puts our common stock at $40, although it is only paying $2 a year dividends.

Question. When was your last dividend paid?

Answer. In the middle of July.

Question. And what were they?

Answer. Fifty cents a share.

Question. Is that the last dividend that you have paid?

Answer. Well, we paid——

Question. You pay twice a year or quarterly?

Answer. We pay quarterly. We paid a dividend on the preferred stock on the 1st of June and on the 1st of September—quarterly on the preferred and quarterly on the common. The common was paid the 15th of July and the next quarter will come on the 15th of October.

Question. Is your preferred stock and common stock on the same basis of $100?

Answer. No. The common stock has no par value.

Question. I see. The preferred stock is $100 and the common stock with no special value.

Answer. No par value.

Question. Is your stock quoted on the exchange?

Answer. No, sir.

Question. What is the present price of your product by the gross?

Answer. Milk bottles, quart, by carloads, in single carloads, milk quart bottles are sold at $8.25 a gross, delivered, freight allowed to destination. On larger quantities, such as 10 carloads, 25, 50, and 100, will bring a less price.

Question. In other words, in a great quantity you sell at less?

Answer. Yes.

Question. Now, has there been any material decrease or increase in the price of milk bottles since the taking over by you and your associates of the companies mentioned here?

Answer. Yes, there was an increase. I think the gentleman that represented your commission here found by examination of the books and records that the average increase in cost of material, labor, and freight was 350 per cent. We increased the price of bottles about 100 per cent.

Question. What year was that?

Answer. That was during the year 1920 and 1921. No, 1920.

Question. Let me understand you, Mr. Baldwin. Do you mean to tell me that after the acquiring of the additional companies here by you and your associates that the price of milk bottles went up 100 per cent?

Answer. Yes, sir, and the price of coal went from $3 to $13 a ton f. o. b. at the mines, and the price of freight another 100 per cent.

Question. In other words, changed conditions in the industrial field is what you attribute the necessity for the raising of prices to?

Answer. We did not raise near as much as the price of material or freight. The average increase, I think, was 350 per cent and our average increase was 100 per cent. By getting these companies in we cut down our sales expense and cut down our administration expense, and we sold at a very close margin.

Question. I was going to ask you about the benefits. I would be glad if you would state for the record, in your own words, the mate-

rial advantage that the Thatcher Manufacturing Co. experienced from the acquisition by it of the Travis, Essex, and Lockport companies, in just a few words.

Answer. Why, we were able, by the acquisition of the companies in increasing our sales, to cut out the administration expense of all of them, and to reduce our sales expense. Our average sales expense is less than 2 per cent of the gross. It runs about from 1.5 to 1.56 up to 1.76.

Question. That is for the conducting of your sales operations?

Answer. That is the salesmen's salaries and other expenses.

Question. Two per cent of your business?

Answer. Less than 2 per cent. For example, Mr. Travis was drawing a salary of $20,000 a year as president of his company——

Question. That was eliminated, of course?

Answer. That was eliminated entirely.

Question. And the same may be said of the officers of the Essex and Lockport companies?

Answer. Yes; and the Woodbury company.

Question. So, generally speaking, the acquisition of the Travis and the Essex, and Lockport companies enabled you and your associates to materially decrease the expenses of operation all around, didn't it?

Answer. It did; yes, sir. Not only that, we increase the output in their factories by cutting out the fighting that they had with their men and getting them in harmony and teamwork. Now, the price of soda ash, that they were paying for soda ash, was 55 cents a hundred. It went up to $2 a hundred that we had to pay for soda ash.

Question. That was following and during the war period?

Answer. Soda ash is the most expensive thing that goes into milk bottles or any other glass bottles. A cent a hundred on soda ash means a cent a gross on milk bottles. Now, the price of sand went up to 350 per cent above what it was. The price of lumber went up to about 350 per cent and is still away up. The price of lime—lime we used to get at $2.24. That went up to $13 a ton.

Question. That increase you made during the war period, did that continue?

Answer. No. We made a 50-cent-a-gross reduction on the 1st day of May, 1921.

Question. About a year ago?

Answer. Yes, sir.

Question. And has that scale of prices—does that scale of prices still hold?

Answer. No, sir. There have been three other reductions since. We have reduced the price of milk bottles three times 50 cents a gross and one time 50 cents a gross on quarts, 75 on pints, and $1 a gross on half pints, and we didn't have a competitor that did not kick like a steer and say we were fools.

Question. Now, Mr. Baldwin, I want to ask you if you know, and I presume you are familiar with the names of your competitors throughout the country?

Answer. Yes, sir; largely.

Question. Name as many of them as you can, one by one.

Answer. That were in business prior to our buying the assets of these companies: There was the Winslow Glass Co. of Columbus, Ohio; the Liberty Glass Co., of Sapulpa, Okla.; the Buck Glass Co. ——

Question. Where is that?

Answer. They are at Baltimore.

Question. All right. Next?

Answer. That is all that were in business.

Question. Prior to the taking over?

Answer. Prior to the taking over. No. The Atlantic Bottle Co.

Question. Where are they located?

Answer. They weren't in operation making milk bottles at that time. The Atlantic Bottle Co.'s office is in New York City, but their factory is at Tarentum, just outside of Pittsburgh.

Question. Now, did the Winslow Glass Co. make milk bottles entirely?

Answer. Yes, sir.

Question. Is it a large or big concern? How does it compare with the Thatcher Manufacturing Co. in size, capital stock, and output?

Answer. I do not know what their size is. It is practically owned by Palmer Winslow and his family. They have two furnaces, but since we have bought out these plants there have come in the Burney-Bond Co. and the F. E. Reed Glass Co., of Rochester, N. Y.; the Lamb Glass Co., of Mount Vernon, Ohio; a factory at Alexandria, Va., Diamond, I think his name is; another at Richmond, Va.; another at Norfolk, Va.; another is being constructed that we think will be making bottles in October at Jacksonville; another at Chattanooga, Tenn., making milk bottles, and another down in Virginia—I can not just think of his name now—that are taking orders for milk bottles, and another out on the Pacific coast. There were two factories out there making milk bottles prior to the taking over and now there are four.

Question. You don't know their names?

Answer. No; I do not.

Question. You are in competition with them?

Answer. One is the Pacific Coast Glass Co. and the other is the Illinois-Pacific Glass Co. Then there is another down at Los Angeles and one up at Seattle, and then there is another factory started to make milk bottles in Michigan. The Burney-Bond have built a new factory—a new furnace; the Lamb Glass Co. is building a new factory and new furnace. They are using these full automatic machines. And so is the Winslow—they have turned over into a full automatic machine.

Question. How many furnaces does the Thatcher Manufacturing Co. have?

Answer. We have three here in Elmira, two in Streator, one in Lockport, one at Dunkirk, one at Parkersburg, one at Clarksburg, one at Cedar Grove, one at Mount Vernon for milk bottles, and we have three furnaces at the Woodbury Glass Co. They are not engaged in manufacturing milk bottles.

Question. That makes 11 in all?

Answer. Yes, sir.

Question. Does that take in the furnaces in connection with the Travis, Essex, and Lockport?

Answer. Yes, sir.

Question. So your company has in all 11 furnaces?

Answer. Yes, sir.

Question. Of course, the acquisition by you and your associates of the stock of the Travis, Essex, Lockport, and Woodbury companies carried with it the assets and the physical properties of these companies?

Answer. Yes, sir; that was all owned by the Sterling Glass Co. and Libbey, Ford, and myself. When they got through they dropped the whole load on my shoulders, and I sweat.

Question. So Mr. Libbey and Mr. Ford and yourself were the acquirers of these properties, weren't you?

Answer. Yes, sir.

Question. And when Libbey and Ford relinquished, you took over?

Answer. I had to.

Question. Was that done personally or as a representative of the Thatcher Manufacturing Co.?

Answer. Personally.

Question. And you were the sole owner, then, of the stock of the entire three companies?

Answer. I was; yes, sir.

Question. Are they run now or are they operated now by you individually or are they owned by the Thatcher Manufacturing Co.?

Answer. The Thatcher Manufacturing Co., along in June, I see by these records, not at the time of the paying of that note, had these companies dissolved and took over the assets of these different companies.

Question. What became of the stock in this case of these companies?

Answer. Well, the companies were dissolved afterwards.

Question. You did own, personally, after Libbey and Ford got out, the stock of the three companies acquired—Travis, Essex, and Lockport?

Answer. Yes, sir.

Question. Now, did they get out subsequent or prior to the issue of the bonds?

Answer. Prior—a long time prior; yes, sir.

Question. Then, who issued the bonds?

Answer. Then when Mr. Mandeville found he could finance this matter, for it was a very hard time to finance matters in 1920, when Mr. Mandeville after working night and day, and I thought he did a wonderful piece of business, we found that we could get through and save my neck, then we said to the Thatcher Manufacturing Co., "We will turn these assets over to you and we will run this business together, if you will put the Thatcher Manufacturing Co. into the pot to sweeten it up."

Question. That is what I want to know about. I want to know exactly about the converting of the stock which carried with it the assets—the physical properties, of the Travis company, the Essex company, the Lockport company, from you, individually, to the Thatcher Manufacturing Co.

Answer. The stock was never transferred. They simply bought the assets before the companies were dissolved. Then the companies were dissolved.

Question. You gentlemen then simply said, "There is no stock to these companies; we will just wipe the stock out and let the assets and physical properties be merged with the Thatcher Manufacturing Co." Is that what you said, virtually?

Answer. Virtually we said we would buy the stock and assets of this company and then dissolve the company and wipe the company out, yes, sir.

Question. And you were the sole owner?

Answer. Surely.

Question. And when the Thatcher Manufacturing Co. then took over for purposes of management, etc., the three companies, it virtually took over the stock which carried with it the assets and the physical properties of the three companies?

Answer. I do not think so; no, sir.

Question. Could you simply wipe out an existing issue of stock that you had purchased and say, "This stock does not exist; I will transfer simply the assets of these companies and the physical properties of that company to the Thatcher Manufacturing Co.?"

Answer. These individual corporations transferred their assets, as they had a perfectly legal right to do, and after their assets were transferred then the company or companies were dissolved.

Question. Was there a deed of transfer of the properties of the three companies to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Is that an exhibit in this case?

Answer. Yes, sir. That is Exhibit Z 6. Z 1, I think, is the first one.

Question. That transfer, Mr. Baldwin, you recognize as Exhibit Z–1 to the stipulation?

Answer. Yes, sir.

Question. And this paper, do you remember the date?

Answer. June 17, 1920.

Question. That was a little less than a year from your transaction with the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Now, as president of the Thatcher Manufacturing Co., you, Mr. Baldwin, have given an account of your stewardship at least once a year, didn't you?

Answer. Yes, sir.

Question. Do you remember your report as president of the Thatcher Manufacturing Co. in February, 1920, the year following the acquisition of the companies mentioned in this proceeding?

Answer. Yes, sir.

Question. On page 3 of your report you use this language—about the middle of the page you will find it: "After several months of negotiations with the Owens Bottle Machinery Co. and obtaining their consent and advice that we purchase these companies and thereby obtain the rights to the Hartford-Fairmont feeders, upon the 29th day of August we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and machines and milk

bottle business of the J. T. & A. Hamilton Co." That was a correct statement?

Answer. You have used my language.

Question. Now, the word "we" there refers to——

Answer. It refers to the Sterling Glass Co., but I might say it was rather carelessly worded. In December Mr. Libbey and Mr. Ford had notified me that they were through and left this $1,610,000 note on my shoulders.

Question. That was in December?

Answer. In December.

Question. 19——

Answer. 1919. Mr. Mandeville at once got busy on trying to finance this matter and had got it down where he said he could finance it; the only question was in regard to the amount we would have to pay. Then I thought if we could I would have the Thatcher Manufacturing Co., maybe they would take it over.

Question. As a matter of fact, didn't the Sterling Glass Co. cease to exist very shortly after it was organized?

Answer. I do not remember when it was dissolved, but it was not dissolved until along in September—September 9, 1920.

Question. There is a reference here, "We purchased." You mean the Sterling Glass Co. took over the three?

Answer. Yes, sir. Mr. Libbey's relation to me personally has been very close, very friendly, indeed, and he used the expression in our conversation to Mr. Mandeville and myself, that I would be at the head of a company larger than the Owens Bottle Co. At that time we expected to buy out the Hartford-Fairmont Co.

Question. But that fell through?

Answer. That fell through, yes.

Question. Well, as a matter of fact, the title to the Travis, Essex, and Lockport companies was never in the Sterling Glass Co., was it?

Answer. No, sir.

Question. So that your statement here to "we" was unfortunate?

Answer. Yes, sir.

Question. The facts are, as I understand it, that you and Libbey and Ford took over—acquired by actual purchase—one-half of the money being raised from the Sterling Glass Co.?

Answer. Not half of it.

Question. Well, 500,000?

Answer. Yes, less than a quarter.

Question. You three gentlemen took over these three properties—the stock of these three concerns—and then subsequently, for reasons known to yourselves mostly, Libbey and Ford dropped out?

Answer. Yes, sir.

Question. Leaving you as sole owner of the business?

Answer. Yes, and leaving the note for me to pay.

Question. And subsequently the whole thing was taken over by Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You say the assets and the physical properties?

Answer. Yes, sir.

Examiner SHEPPARD. I think that will be all for the time being, Mr. Smith.

Mr. BRIXDLEY. Mr. Baldwin, regardless of any conclusions that any of us may hold, the fact remains that the stock of the Travis, the Essex, the Lockport, and the Woodbury Glass Cos. was acquired from the stockholders of these respective companies in the office of the Guaranty Trust Co. at New York on the 28th day of August, 1919, was it not?

Answer. Yes, sir.

Question. And that stock was paid for by the proceeds of the three notes made and indorsed by you, Ford, and Libbey, together with the $500,000 subscribed in cash to the capital stock of the Stirling Glass Co.?

Answer. Yes, sir.

Question. That is true, isn't it?

Answer. Yes, sir.

Question. Now, the stock of the four companies, after having been indorsed in blank by the stockholders of the four companies, was deposited with the Guaranty Trust Co. as collateral security for the three notes given by yourself, Ford, and Libbey?

Answer. Yes, sir.

Question. Now, immediately following that, the contract which is shown in the stipulation as Exhibit G was executed by you, Ford, and Libbey and the Sterling Glass Co.?

Answer. Yes, sir.

Question. Now, as stated heretofore, the contract of August 28, 1919, of which Exhibit G to the stipulation is a copy, gave authority or an option to Ford and Libbey to retire from the transaction under conditions named?

Answer. Yes, sir.

Question. Now, examine, if you please, Exhibits I and J of the stipulation and see if you can identify them?

Answer. Yes, sir.

Question. What is Exhibit I?

Answer. It is a letter written to me by William Ford under date of December 11, 1919, notifying me that he wishes to withdraw.

Question. Now, you received that from Mr. Ford; the original, at least?

Answer. Yes, sir.

Question. Now, examine Exhibit J and tell us what that is?

Answer. A similar letter from E. D. Libbey, dated December 11, 1919.

Question. Notifying you that he also desired to retire?

Answer. Yes. They were both given from the same office.

Question. Now, Exhibits I and J by Mr. Ford and Mr. Libbey mentioned the contract of August 28, 1919?

Answer. Yes, sir.

Question. Which we have heretofore referred to?

Answer. Yes, sir.

Question. Therefore, you were then advised that Mr. Ford desired to retire from this transaction in reference to the purchase of stock in the four companies named?

Answer. Yes, sir.

Question. Now, the agreement with Mr. Libbey provided that if he desired he would be repaid for the $250,000 subscribed to the capital stock of the Sterling company, did it not?

Answer. Yes, I think it did.

Question. Was he repaid that money?

Answer. He was.

Question. By whom?

Answer. Out of the sale of the bonds.

Question. What bonds?

Answer. When we paid up these notes, the $2,000,000 bond issue.

Question. Of the Thatcher Manufacturing Co.?

Answer. Of the Thatcher Manufacturing Co., which covered all these properties—the Woodbury plant, Travis, Lockport, and the Essex glass plants.

Question. Was not Mr. Libbey paid $250,000 for his stock in the Sterling Glass Co. with some interest added by the Thatcher Manufacturing Co.?

Answer. I think the check was drawn by the Thatcher Manufacturing Co., but it was out of that money.

Question. It was not, then, from the sale of additional stock of the Thatcher Manufacturing Co.?

Answer. The Thatcher Manufacturing Co. did sell additional stock about that time.

Question. At about that time?

Answer. At about that time.

Question. So that Thatcher Manufacturing Co. paid Mr. Libbey for his stock in the Sterling company?

Answer. The Thatcher Manufacturing Co. gave him the check; yes, sir.

Question. Then the Thatcher Manufacturing Co. became the owner of all of the stock in the Sterling Co.?

Answer. Yes. That was done in September, 1920.

Question. So that Thatcher Manufacturing Co. actually then owned all the stock in the Sterling company except a few shares issued to officers or agents of the Thatcher Manufacturing Co. for the purpose of qualifying officers and directors?

Answer. Yes, sir.

Question. You have stated heretofore that prior to this stock acquisition in August, 1919, the Travis Glass Co., the Lockport Glass Co., and the Essex Glass Co. were engaged in manufacturing and selling milk bottles in various States of the United States?

Answer. Yes, sir.

Question. And they were so selling milk bottles in competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir; they were.

Question. And in competition with each other?

Answer. Yes, sir.

Question. Now, that was the situation existing on the 28th day of August, 1919?

Answer. Yes, sir.

Question. Now, after the acquisition of the stock in August, 1919, was competition between the Thatcher Manufacturing Co. and the

Essex, Travis, and Lockport companies continued or did it cease to exist?

Answer. At that time the contracts were practically all taken. They had their contracts and they went on and carried on the business in their own name and under their own organization up until the 1st of January.

Question. Of what year?

Answer. 1920.

Question. Then the 1st of January, 1920, the management and control of the Travis, Essex, and Lockport companies was brought to Elmira, N. Y.?

Answer. Yes, sir; under my control.

Question. And managed from your office or the office of the Thatcher Manufacturing Co.?

Answer. It was managed from our office. I managed it; the books were kept separately from other books.

Question. And separate bookkeeping systems, but all organized, operated, and directed form the same source?

Answer. Yes.

Question. And by the same organization?

Answer. Yes, sir. I directed it and we carried it out.

Question. At the time of the stock acquisition in August, 1919, the stock in the four companies was in the name of certain stockholders who assigned the stock on the day of the purchase in New York, was it not?

Answer. They delivered it at that time; they signed it before.

Question. There was no change in the book ownership or record ownership of the stock at that time, was there?

Answer. No, sir.

Question. The stock or certificates of stock were held in the office of the Guaranty Trust Co. at New York?

Answer. Yes, sir.

Question. Now, do you remember that subsequent to your purchase of the certificates of stock of the four companies the certificates were sent to Elmira, N. Y.?

Answer. Yes, sir, they were, and certain stock was issued so that we could have control of the officers of these companies. I was president of these companies.

Question. The stock of these four companies was sent by the Guaranty Trust Co. to a bank in Elmira, N. Y. Is that true?

Answer. I presume it is true.

Question. At any rate, then, in the latter part of 1919 the stock in the Travis, Essex, Lockport, and Woodbury companies was reissued to these officers, agents, and employees or stockholders of the Thatcher Manufacturing Co.?

Answer. No, sir; I think not. I think it was in 1920 a small block of the stock was issued to me and some others that I named so that we could control the board of directors in each company, but the bulk of the stock was not transferred, as I remember it. I may be mistaken, but that is the way I remember it.

Question. And it was issued in the four companies?

Answer. I think five shares, or a few shares, were issued to me and some people I named so that I could control the board of directors. That is the way I remember it.

Question. After January 1, 1920, all competition between the Thatcher Manufacturing Co. and the Travis, Essex, and Lockport companies ceased, did it not?

Answer. Well, practically; yes, I should say so.

Question. Of course, you could not tell exactly the particular date on which it ceased?

Answer. No.

Question. But it did cease?

Answer. There was not very rigid competition.

Question. And absolutely none at all after the deeds from the three companies to the Thatcher Manufacturing Co.?

Answer. I presume not, although I could not say as to that, but I do not think there was.

Question. When certain stock in the Travis, Essex, and Lockport companies was transferred or reissued to you and other persons designated by you was anything paid for the stock so issued to you?

Answer. No, sir.

Question. And nothing was paid by the other persons designated by you to whom stock was issued?

Answer. It was simply so I could control the organization.

Question. Simply for the purpose of providing record issue of the stock?

Answer. Well, it was simply so that I could control the board of directors of these companies. That is what it was for. As I remember, there was only a small portion of the stock transferred.

Question. Look at the stipulation and examine Exhibit L. Can you identify Exhibit L?

Answer. Yes, sir; painfully.

Question. You were one of the parties to the agreement of which Exhibit L is a copy?

Answer. I am.

Question. And the statements made therein to which you subscribed are correct, of course, are they not?

Answer. They are, more or less so.

Question. You at least thought so at the time, did you not?

Answer. Mr. Manderville was a party to this and I signed it.

Question. And that as disclosed by the stipulation is simply a copy of the agreement between you and the bond buyers?

Answer. Yes, sir.

Question. Now, please examine Exhibit Z–10, the last one in the book?

Answer. Yes, sir.

Question. Can you identify Exhibit Z–10?

Answer. I can.

Question. That is a copy of a letter written by you to Bonbright & Co., and Hemphill, Noyes & Co.?

Answer. No, that is a copy of a letter they wrote and I signed.

Examiner SHEPPARD. What is the date of the letter?

Answer. April 23, 1920.

Mr. BRINDLEY. A copy of a letter, then, which you signed?

Answer. Yes, sir.

Question. That statement was made in reference to the bond issue of Thatcher Manufacturing Co. to which we have referred?

Answer. Yes, sir.

Question. And the statements made therein to which you subscribed with your name were true, were they not?

Answer. No. Some of them were not true, but in the main they were true.

Question. They were made, of course, for the purpose of giving information about the sale of the bonds?

Answer. Yes. I never felt very proud of this, to tell you the truth of the matter.

Question. Mr. Baldwin, the Thatcher Manufacturing Co. can and did manufacture milk bottles with the Hartford-Fairmont bottle-making machines more cheaply than it could and did with the Owens bottle-making machinery, did it not?

Answer. Yes, sir; that is true.

Question. As a result of the acquisition of the right—the exclusive right—to use the Hartford-Fairmont machines in making milk bottles, the Thatcher Manufacturing Co. was enabled to manufacture milk bottles more cheaply than it did theretofore; is that true?

Answer. Yes, sir. After we got whipped into line; yes, sir.

Cross-examination:

Mr. SMITH. I want you to make clear, Mr. Baldwin, the nature of the Woodbury company. Have they ever produced milk bottles?

Answer. At one time they made a very few.

Question. How long ago was that?

Answer. Oh, I don't know. Eight or ten years ago.

Question. At the time of this transaction in August, 1919, were they making milk bottles?

Answer. No.

Question. Are they making any now?

Answer. No.

Question. Have they made any since?

Answer. No; they never made any more than two to three thousand gross in a year.

Question. So that at the time of this transaction there was no competition between the wares or product of the Woodbury company and the Thatcher Manufacturing Co.?

Answer. None, absolutely, and there has never been any since.

Question. There was a certain exception to the Hamilton license, was there not? There was an exception to the purchase of the Hamilton business in that the Hamilton company was allowed to continue in business in Allegheny County, were they not?

Answer. Yes, sir, and they are still continuing.

Question. Now, I want to give, Mr. Baldwin, for the benefit of the commission or anybody that ever knew the vast business, a little of the technique of it, and I am going to ask rather leading questions and you will stop me, Mr. Examiner, if I go too far——

Examiner SHEPPARD. I want to get the facts. That is what the commission is here for and that is what I want.

Mr. SMITH. There are practically three steps or processes in the making of bottles, roughly. There is, first, the large tank, maybe 10 or 15 feet in diameter, inside, where the molten glass stands?

Answer. Yes.

Question. And then next is the process of getting what is known as the gathering or the gob or a stream of that glass out of that tank. That was originally done in the hand art by the man with the punty?

Answer. No. With the man with the blowpipe.

Question. Then, the blowing part of that man's work was done—was taken over into the forming machine which blows the bottle. The gather is placed in an iron mold and air is used to expand the glass to the size of that mold. That is known as "blowing"?

Answer. Yes, sir.

Question. And, so, the process consists of the melting of the glass, the getting of the glass together from the furnace into the mold, and the blowing of the glass in the mold?

Answer. Yes, sir.

Question. Now, the Owen machine, as you have it, performs the last two of these functions—it both gathers glass from the pot and blows it—all in one machine?

Answer. Yes, sir.

Question. The Hartford-Fairmont process, so far as in your units, is practically a set of two machines, hooked up to each other to what is known as the feeder, which by a clay paddle dips or, rather, operates in the molten glass, surges the glass out over the dam in the required size; that glass runs down in the trough and is delivered into the mold of the forming machine?

Answer. Yes, sir.

Question. The two machines are hooked up so they operate in time with each other?

Answer. Yes, sir.

Question. But they are practically two machines operated as a unit?

Answer. Yes, sir.

Examiner SHEPPARD. That is, the Hartford-Fairmont machine?

Mr. SMITH. Yes. We call it a milk-bottle unit which consists of the feeder and the forming machine. The feeder is just a paddle which takes the place of the man with the punty rod.

Mr. SMITH. Now, there were, at the time of this transaction, and have been since, have there not, a number of other devices not controlled by the Hartford-Fairmont Co. which successfully deliver a gather from the furnace to the forming machine?

Answer. Yes, sir.

Question. Can you give me the names of some of those devices?

Answer. One of them is the Graham, which was bought afterwards by the Owens people; another is the Miller machine—a feeder; another is the Federal feeder; another is the O'Neill feeder and the Howard feeder.

Question. Are these machines generally on the market for purchase or license?

Answer. They are.

Question. Now, were there also in August, 1919, and are there now, machines not controlled by either Owens or Hartford-Fairmont which perform the forming function?

Answer. Yes, sir.

Question. What machines are those?

Answer. There is the O'Neill and the Miller and the Lynch. I do not know—there are some others—the Graham—there are several of them.

Examiner SHEPPARD. Are they all separate patents?

Mr. SMITH. They are all separate patents, not owned by either Hartford or Owens.

Mr. SMITH. So that in August, 1919, and now it would be entirely possible for the manufacturer of milk bottles to secure, either by purchase or license, from a number of different sources, a feeder on the one hand, and a forming machine on the other, and hook the two together and thus make a completely automatic milk-bottle machine?

Answer. Yes. Several of them are doing it now, namely, Winslow, Lamb, Burney-Bond, and the Atlantic Bottle Co. There are others doing the same thing. I think they are doing it at Richmond.

Question. So that the distinction made in the complaint of a completely automatic machine, at least as a single unit, is not a very important commercial distinction?

Answer. No, sir.

Question. Because while there are only these two machines—Hartford-Fairmont and Owens—that are leased as a single unit, there are various other machines that are not so leased but can be leased and put together?

Answer. Yes, sir. For example, the Woodbury Glass Co. has the Hartford-Fairmont feeder but is using the Lynch machine in making condiment wares.

Examiner SHEPPARD. You mean two different machines put together for a unit?

Answer. Yes, sir. The feeder is one part and the Lynch machine, in which they have no interest, nor the Owens, is put up there for a feeder, and delivers the metal into the mold and makes the bottle.

Mr. SMITH. The contracts with the Hartford-Fairmont Co., which the Thatcher company took over, specifically calls for a feeder and a forming machine as a unit, do they not?

Answer. Yes, sir.

Question. So that the exclusive character of these contracts applies to that unit?

Answer. Yes, sir.

Question. And to that unit only?

Answer. Yes, sir.

Question. Mr. Baldwin, I show you a license and lease No. 3 from the Hartford-Fairmont Co. to the Essex Glass Co., dated December 26, 1916, and ask you if that is one of the leases that the Thatcher company took over?

Answer. It is.

Question. And this was assigned to the Thatcher company?

Answer. Yes, sir.

Question. Suppose you read section 7 until I stop you.

Answer. "SECTION 7. *Number of licenses.*—It is agreed between the parties hereto that the licensors shall issue licenses for the use

of the said patented machinery for making milk bottles within the United States only to the four following named licensees, to wit: Lockport Glass Company, Lockport, New York; Essex Glass Company, Mount Vernon, Ohio; Travis Glass Company, Clarksburg, West Virginia; J. T. and A. Hamilton Company, Pittsburgh, Pennsylvania."

Question. Will you now read subsection C of that section 7?

Answer. "*Provided, further*, That if at any time during the term of said license it shall appear that in any locality or localities a fair proportion of the milk-bottle trade is not being supplied with the product of the said patented machinery or that said licensees are not supplying in the whole United States that proportion of the whole milk-bottle trade of the United States which was sold by them in the year from August 1, 1915, to July 31, 1916, then the licensor may by written notice to the within licensee require them within reasonable time to supply said locality or localities with the said fair proportion or supply the entire United States with their said 1915–16 proportion of the trade, and if the said licensor shall fail to do so within such reasonable time, then the licensor shall have the right to issue additional licenses, similar in terms with this license, to any other licensee or licensees to make up such deficiency, whether occurring in any said locality or localities or in the United States as a whole."

Question. All right. The word "licensor" applies to the Hartford-Fairmont Co.?

Answer. Yes, sir.

Question. This license is to the Essex Glass Co. Are the other licenses to the Lockport, Travis, and Hamilton companies similar?

Answer. Yes, sir.

Question. So that the result of that paragraph is that under certain conditions the exclusive character of that grant is modified?

Answer. Yes, sir.

Question. And the Hartford-Fairmont Company may issue licenses to others?

Answer. Yes, sir.

Question. Can you tell me how many furnaces outside of those controlled by the Thatcher company are now engaged in making milk bottles?

Answer. I will have to count them up. The Reed Glass Co.——

Question. How many furnaces?

Answer. Only one on milk bottles. The Atlantic Bottle Co. has three furnaces; the Burney-Bond Co. has two furnaces; Buck has one; Winslow has two furnaces. Mr. Lamb has one furnace and has let a contract to build another. The Liberty Glass Co. has one. The Chattanooga Glass Co. has one. The Richmond Glass Co. has one; the Diamond at Alexandria—I think that is the name—I think has two, but anyway call it one; there is one at Norfolk, Va. The J. Y. & A. Hamilton have one.

Question. That is only for Allegheny County?

Answer. That is only for Allegheny County.

Question. Suppose we leave that out.

Answer. And then on the Pacific coast, the Illinois Glass Co. has either two—I think they have only one working on milk bottles

and the Pacific has one working on milk bottles and each of the other factories have one working on milk bottles; there are four furnaces working on milk bottles on the Pacific coast.

Question. Did you give the Atlantic?

Answer. I gave the Atlantic—three furnaces.

Question. That is a total of 19——

Examiner SHEPPARD. Strike out the Hamilton.

Mr. SMITH. So that there are at least 19 furnaces not controlled by the Thatcher Manufacturing Co. almost all of them in operation, and possibly two of them in construction. While we are on that question, let me ask if this Diamond Glass Co. and the one at Jacksonville, Fla., and the one at Chattanooga, Tenn., and the Lamb Glass Co. in Ohio, are they in the course of construction or are they in operation?

Answer. They are all in operation unless it is the Chattanooga Glass Co. I do not mean Chattanooga I mean the one at Jacksonville, Fla. I have seen some of their literature, and one of their men met our salesman one of our salesmen and told him, first, told him that they would be manufacturing and selling bottles the 1st of August, and then afterwards he met him and told him it would be the 1st of October. Whether they are in operation now or not I do not know.

Question. The milk bottles produced by these furnaces which you have just named are sold in competition with the Thatcher company?

Answer. Yes, sir; very vigorous competition.

Question. Exhibit G of the stipulation, which is the contract of August 28, 1919, between yourself, Libbey, Ford, and the Sterling Glass Co., you are familiar with, Mr. Baldwin?

Answer. I am.

Question. Does that contract fairly express the transaction as you remember it?

Answer. I think it does. I haven't that entirely in my mind just now.

Question. I will go over one or two points for the examiner's benefit and everybody concerned. Let me rehearse that and see if I am correct in my statement on the gist of it. As I understand that contract, the stocks of the four companies meaning thereby Essex, Lockport, Travis, and Woodbury were purchased by money raised by a payment from the Stirling Glass Co. by notes discounted by you three gentlemen, the notes aggregating $1,610,000 and the contribution of the Sterling Glass Co. of $500,000. The individual notes were either signed or indorsed by all of you?

Answer. Yes, sir.

Question. That in the uncertainty as to the future development of the transaction, Mr. Libbey and Mr. Ford obtained the right to withdraw and be reimbursed for the contribution to the Sterling Company, and that if they did so you were to assume all the liabilities of that contract?

Answer. Yes, sir.

Question. What were the main liabilities of the contract?

Answer. The liability of the contract was to pay the $1,610,000 note.

Question. Held by the Guaranty Trust Co.?

Answer. Yes; and the $250,000.

Question. When you made that contract, did you know of any surety how you were going to finance that?

Answer. I did not. I thought Mr. Libbey was going to do it.

Question. Suppose, Mr. Baldwin, that after Mr. Libbey withdrew and the liabilities thrown upon you personally, the Thatcher Manufacturing Co. had been unable or unwilling and there had been nobody else able or willing to aid you in financing it, what would have been your position?

Answer. I would have lost everything I had.

Question. In other words, you would have had to pay the $1,610,000?

Answer. No; I would not have to pay——

Question. You would have been liable for it?

Answer. Yes, sir.

Question. That is the reason you were worried at that time?

Answer. Yes, sir.

Question. You had no assurance of any sort that the thing would take place that did take place—that the Thatcher company could finance and take over the assets?

Answer. No, sir.

Question. So that after that notice of withdrawal was given and for some time thereafterwards you were primarily responsible?

Answer. I was; yes, sir.

Question. Now, these stocks of the four companies were never transferred as of record to any except certain individuals, whoever they might be?

Answer. Yes; a small portion of it was transferred.

Question. To individuals?

Answer. To individuals.

Question. No single share of any of the stocks of these companies was ever transferred to the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. When the purchase of the stock was made the stock was not changed on the records of the company?

Answer. No, sir; it was not.

Question. But inasmuch as you, Libbey, Ford, and the Sterling company had to pay the money for the purchase, you had, if anybody, the equitable ownership of these stocks?

Answer. Yes, sir.

Question. And in that sense you purchased them?

Answer. Yes, sir; that is right.

Question. Now, let me get a little further. Under that contract the Sterling Glass Co. had the privilege, upon the payment of the said notes, to take over the collateral. That was the stocks?

Answer. Yes, sir.

Question. As a matter of fact, the Sterling company never paid these notes, did it?

Answer. No, sir.

Question. Now, suppose that your fears had been realized—that after this liability had come upon you, you had gotten no assistance in financing and you had thereupon been obliged to pay all of these notes—over a million and a half—would it be your belief that you would then be entitled to these stocks?

Answer. Yes, sir.

Question. On the ground that you were the one responsible for the notes and, therefore, had the right to the collateral?

Answer. Yes, sir.

Question. Do you remember, Mr. Baldwin—this is a mere detail—as to whether there went with these notes and the collateral any formal collateral assignment of the notes authorizing the sale or in case of nonpayment of the notes—do you remember anything of that sort?

Answer. I think that they did have it; yes, sir.

Question. There probably was authority of that sort?

Answer. Yes, sir.

Question. You said once or twice, Mr. Baldwin, I think, that the Sterling company bought these stocks. In view of the statement that I have just made and that you have assented to, I do not think that was quite correct—possibly I misunderstood you. As I understand it, the Sterling company and you three gentlemen bought the stocks?

Answer. Yes, sir; that is what bought it.

Question. Now, you said that before this transaction that the Thatcher company controlled about 40 per cent of the milk-bottle production?

Answer. Yes, sir; that is about right.

Question. Have you any idea of what you control now?

Answer. About 60 per cent.

Question. Has that been decreasing somewhat or increasing?

Answer. Well, it has run along about the same. I think that during 1920, during that fall, with the shortage of material, and cars, etc., and our competitors laid down and let their factories close, we kept ours going, they took off a balance sheet in red—we got it up to 70 per cent—but now that they are in operation it is down to about 60 per cent. I make that statement because we have a National Bottle Manufacturers' report—they all report their business save two or three and we are getting by this report just a little over 60 per cent and with those that do not report we would cut it down to 60 per cent.

Question. There were certain advantages of the combination or purchase of these assets, as you like, which you did not name. In the first place, there was the elimination of cross freights?

Answer. Yes, sir.

Question. And made up a very much improved distribution system?

Answer. Yes, sir.

Question. In the second place, as I understand it, you greatly improved the methods throughout the various factories?

Answer. We have increased the output in one factory—it is up now to 40 per cent above what it was when we took it.

Question. Did you decrease the cost of the various factories by increasing the output?

Answer. Yes, sir.

Question. That is, you decreased the percentage of overhead?

Answer. Yes, sir.

Question. Did you have any advantage by large purchase of materials?

Answer. Yes, sir.

Question. Taking the report of which I mention in part, the period from August, 1919, through 1920, what were the general rates of advance in the cost of raw materials?

Answer. Well. I see these figures here, but they are not anywhere near large enough. I paid $2 a hundred for soda ash—I used to get it for 45 cents, but these competitors were paying 55 for it; when I paid $2, that represented a 400 per cent advance.

Question. How about sand?

Answer. We had a contract for sand in the east for $1.15 a hundred and it went up to $3.50 a hundred. Then we had to chase men down there to get the cars loaded and get the same. In our central western plant we had a contract running for five years at 65 cents per ton for same and we paid them as high as $2.60 a ton for it. Coal—we had a contract for $3 and $3.50. We bought six cars of coal that we paid from $11 to $13 a ton for it at the mine. Freight increased—this was not made until the last increase—freight increased just 100 per cent over what it was prior to the war. Labor increased a good deal more than 100 per cent and crating increased a full 300 per cent.

Question. What is the largest single item of cost of material?

Answer. Soda ash is the most important item.

Question. What is the next in importance?

Answer. The next is coal and crating.

Question. Now, the course of your prices, Mr. Baldwin. Can you give me an outline of them?

Answer. I can not. Our records would show we increased the price twice, I think, and got it up to about 100 per cent of what it was before the war, and then we started on the 1st of May by decreasing it—the 1st of May, 1921. We have made four reductions.

Question. How does it compare now with the pre-war prices?

Answer. It is a little above the pre-war prices.

Question. How much above?

Answer. I could not say how much, but if the freight was down to where it was—they have taken off 10 per cent of the freight—if freight was back to where it was, and we took that off, we would be down as low as we were before the war.

Question. To say nothing, however, of the still existing higher costs of materials?

Answer. We are paying $1.10 and $1.25 for soda ash at the present time. We are paying $2.25—well, we have different prices for sand—we are paying $2.25, $2, and $1.75 in the central western plant. We are getting it out there at 75 cents—they got in a war out there in the sand mines and we are taking advantage of it.

Question. And you have made these reductions. Could you have made them with the still large cost of materials, had it not been for the increased efficiency of your plant?

Answer. We could not. The price of milk bottles would have been far higher during the war period and after-war period, had we not bought out these competents.

Question. In that Exhibit K on page 3, as the examiner brought out, you used the language, "We purchased the stock of the companies named." In so far as there is any implication in that lan-

guage that the Thatcher company purchased the stock, is that correct or not?

Answer. That is not correct.

Mr. SMITH. That is all at present, Mr. Examiner. We wish to reserve the right to ask further questions to-morrow.

Examiner SHEPPARD. We will take an adjournment at this time until 9.30 o'clock to-morrow morning.

Now, to wit 5.50 o'clock p. m. same day, adjourned until Tuesday, August 15, 1922, at 9.30 o'clock a. m.

ELMIRA, N. Y., *August 15, 1922.*

Met pursuant to adjournment, 9.30 o'clock a. m.

Before: W. W. Sheppard, examiner.

Appearances: Mr. Brindley for the commission; Mr. Smith for the respondent.

Examiner SHEPPARD. Gentlemen, if you are ready, we will proceed. Mr. Smith, I believe you finished your cross-examination yesterday?

Mr. SMITH. I finished my cross-examination, yes. I will take Mr. Baldwin on the direct. I will make him my witness now.

Examiner SHEPPARD. All right. Go ahead.

RESPONDENT'S TESTIMONY.

FRANCIS H. BALDWIN was thereupon called as a witness on behalf of respondent, and having previously been sworn, testified as follows:

Direct examination by Mr. SMITH:

Question. Mr. Baldwin, I show you Exhibit L of the stipulation, which is an agreement entered into on April 10, 1920, between yourself and Bonbright & Co. and Hemphill, Noyes & Co. in regard to the bond issue and ask you to read the second paragraph.

Answer. "Whereas the seller represents the control of at least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Co., a corporation of the State of New York (hereinafter referred to as the corporation), for the purpose of carrying out this plan hereinafter set forth and entering into this agreement——"

Question. The word "seller" there represents yourself?

Answer. Yes, sir.

Question. You say the seller represents a control of at least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Co. Just what do you mean by "represents" there?

Mr. BRINDLEY. We desire to object to that question because it calls for a conclusion of the witness and because it calls or seeks to alter or vary by parol testimony the terms of a written instrument.

Mr. SMITH. I will withdraw my question, Mr. Examiner. I will take it up in another shape. Did you, as a matter of fact, control, yourself, a majority of the voting stock at that time of the Thatcher Manufacturing Co.?

Mr. BRINDLEY. We object to that question on the same grounds assigned heretofore to the question just withdrawn.

Examiner SHEPPARD. Mr. Baldwin can testify to that from his own knowledge—I will have to allow the question.

Answer. I did not. I owned a majority of the common stock of the Thatcher Manufacturing Co. and a fair holding of the preferred stock. The preferred stock had the same voting power as the common stock. I did not own a majority of the voting stock of this company.

Mr. SMITH. Did you, when that document was written, hold the proxies of other stockholders of the Thatcher Manufacturing Co. for any purpose?

Answer. I did not at the time.

Question. I show you the same Exhibit L and ask you to read Section IV.

Answer. "Either before or at the time of the organization of the corporation as hereinbefore provided, the corporation shall acquire all of the assets and business of the following companies, to wit: Travis Glass Co., Essex Glass Co., the Lockport Glass Co., all of the shares of stock of said companies being now owned by the Stirling Glass Co., whose shares of stock are all owned by the corporation; and at the same time the corporation shall also acquire all of the common stock of the Woodbury Glass Co., which is now owned by the Sterling Glass Co."

Question. You said there all shares of stock of said companies being now owned by the Sterling Glass Co. Was that the fact at the time that letter was written?

Mr. BRINDLEY. I object to that question.

Mr. SMITH. I think, Mr Examiner, I am entitled to show the fact.

Examiner SHEPPARD. Read the question again.

(Question repeated.)

Examiner SHEPPARD. What is the date of the letter?

Mr. BRINDLEY. It is a contract instead of a letter.

Mr. SMITH. April 10.

Examiner SHEPPARD. What is your objection, Mr. Brindley?

Mr. BRINDLEY. It seeks to vary or alter the terms of a written instrument by parol testimony and seeks to vary it subsequent to its execution and is an effort to contradict or change the terms or meaning of a written instrument subscribed by the witness himself.

Mr. SMITH. In answer to that I will say that while that really would apply, doubtless, in a case where we were endeavoring to enforce or deny the direct rights arising under instruments, this is a totally different situation. The obligations are not in issue here—there is no attempt made to enforce the obligation of this instrument here. We are simply endeavoring to set forth the actual facts. A statement has been made in this instrument which becomes relevant, possibly in a wholly disassociated case, and that statement, in our view, is incorrect and ought to be corrected to get the facts before the commission.

Examiner SHEPPARD. I will let Mr. Baldwin answer the question for what it is worth and see if it throws any new light or gives any additional facts for the commission's consideration.

Answer. It was not.

Examiner SHEPPARD. If the statement that Mr. Baldwin has said was a misstatement—was not the fact—let us have the facts for the record.

Mr. SMITH. Refresh your recollection by mental reference or otherwise to the contract of August 28, 1919. Who, actually, under that contract, did purchase the stocks of these companies?

Mr. Brindley. We object to that question because it also seeks to vary by parol testimony the terms of the written instrument of August 28, 1919.

Mr. SMITH. I am not attempting to vary it. I am merely by reference trying to refresh his memory. Possibly I have my sentence a little clumsy. I am not trying to vary that contract and say there is any mistake in it.

Examiner SHEPPARD. That is my impression.

Mr. BRINDLEY. Then it is objectionable because it calls for a conclusion of the witness.

Examiner SHEPPARD. This witness has a right to make conclusions as he testifies from his own knowledge.

Mr. BRINDLEY. But the contract speaks for itself.

Examiner SHEPPARD. But anything that the witness knows along these lines I think the witness has a right to answer. You may proceed.

Answer. Mr. Libbey, Mr. Ford, and myself and the Sterling company—the Sterling company put in $500,000. The other three put in $1,610,000.

Mr. SMITH. Was the Thatcher company at any time from August, 1919, to the present date the record owner of any of the stocks of the four companies under discussion or any parts of them?

Answer. It was not.

Mr. BRINDLEY. What date do you refer to in that question?

Mr. SMITH. From August, 1919, to the present.

Question. Was the Sterling Glass Co. at any time between those dates the record owner of any of the stocks of those four companies?

Answer. It was not.

Question. Did the Thatcher company or the Sterling company at any time between those dates issue or attempt to issue any proxies on any of the stocks of these four companies?

Answer. No, sir.

Question. You and Mr. Libbey and Mr. Ford and the Sterling company, as you have testified, were the equitable owners of the stocks of these four companies. Suppose you had at any time after becoming such owner—suppose you four parties had agreed to transfer either of those stocks or the assets of those four companies to the Owens Bottle Co., for example. Could you have done it?

Mr. BRINDLEY. We object to that question because it calls for the legal conclusion of the witness and asking his interpretation of legal instruments or documents in evidence, and also seeks for the answer of the witness on a supposed situation.

Examiner SHEPPARD. I was going to say, Mr. Smith, I think that is a supposition that has no real bearing on the case—something that is extraneous.

Mr. SMITH. I will withdraw that question. I think it is rather doubtful. It is an argument to be deduced from the papers themselves.

Question. Will you go through—just glance through—the exhibits to this stipulation and point out to me any that indicate any initial action on the part of the Thatcher Manufacturing Co. of whatsoever nature?

Mr. BRINDLEY. We object to that question because it calls for a conclusion on the part of the witness.

Examiner SHEPPARD. As I understand it, the Thatcher Manufacturing Co. has already signed its agreement as to the stipulation?

Mr. SMITH. Yes; that is true.

Examiner SHEPPARD. So the question can have no bearing upon it, one way or the other.

Mr. SMITH. I will withdraw that question—that is really a matter of argument.

Question. Mr. Baldwin, I show you a document entitled "Assignment of license." Will you tell me what that is?

Answer. This is the assignment by the Hartford-Fairmont Co. of the licenses of the Essex Glass Co. to Thatcher Manufacturing Co.

Question. Be a little more correct, Mr. Baldwin—it is an assignment by the Essex company with the consent of the Hartford company?

Answer. Yes, sir; and signed by all of those people.

Question. What is the date of that?

Answer. The 1st day of June, 1920.

Question. I want to correct this in one more other respect. This is the assignment, simply, of license and lease No. 10?

Answer. Yes; license and lease No. 10.

Question. How many licenses were there altogether assigned by this way?

Answer. Eleven.

Question. This corresponded with the eleven Hartford-Fairmont feeders taken over by the Thatcher Manufacturing Co.?

Answer. Yes, sir; I assume so.

Question. Do you remember of your own knowledge the dates of these?

Answer. I do not.

Question. Will you be good enough to say what the dates are in each case?

Answer. Each one bears the date June 1, 1920.

Question. And the Hartford-Fairmont licenses—could they be transferred without the consent of the Hartford-Fairmont Co.?

Answer. No, sir.

Question. Mr. Baldwin, have you the production figures that the examiner asked for yesterday?

Answer. I have. These were taken, I am told, from our certified accountant's report. The first six months of 1917 Thatcher Manufacturing Co. made 184,535 gross; the second six months it was 169,036 gross. The first year was 353,571 gross—in 1917; in 1918, 300,995 gross; in 1919, 290,452 gross; in 1920, 833,870 gross.

Examiner SHEPPARD. Have you the 1921 figures there?

Answer. No, sir; I can get those for the first six months—our auditor's report is not out yet, but I presume they can get them. The accountants haven't got their report in as yet.

Mr. SMITH. In paragraph 1 of the complaint it is stated that the Thatcher Company has branch offices and manufacturing plants at Kane, Streator, Clarksburg, Cedar Grove, and Lockport. As a matter of fact, does the company have branch offices there?

Answer. No, sir; none of them. It has factories there, but not branch offices.

Question. Now in paragraph 2 of the complaint it is said that the Travis Glass Co., on August 28, 1919, had a branch plant at Cedar Grove, W. Va. As a matter of fact, was there a branch plant at Cedar Grove at that time?

Answer. They were in the course of construction at that time.

Question. But not completed?

Answer. No, sir; and we made a mistake in completing it.

Question. In paragraph 3 of the complaint it is said that the Owens bottle-blowing machine is a modern, improved, patented machine, etc. Were the Owens machines that your company was running, modern machines?

Answer. Well, we put the first ones in in 1905 and they have made some improvements on some machines since then and enlarged the machines. We have at this plant here two 10-arm machines. They have been in use up here, I guess, about 10 years and they have had them on the market for several years prior to that.

Question. How old is the youngest of your Owens machines?

Answer. I think I can safely say 10 years.

Question. Paragraph 12 of the complaint. The first sentence reads as follows: "On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw and on said date so notified Baldwin and the respondent." Was that notification to the Thatcher company or to you personally?

Answer. It was to me, personally. None was sent to Thatcher Manufacturing Co.

Question. In paragraphs 15 and 16 there is a discrepancy that I would like to have you clear up. It is stated, in substance, in paragraph 15 of the complaint that "prior to June, 1920, the Thatcher company accomplished a bond issue in the sum of $2,000,000 secured by a first mortgage to the Guaranty Trust Co., of New York, as trustee, on all the assets of the Thatcher Manufacturing Co., Sterling Glass Co., Travis Glass Co., Essex Glass Co., Lockport Glass Co., and the capital stock of Woodbury Glass Co." In paragraph 16 of said complaint it is stated that "'in the month of June, 1920,' the said Travis, Essex, Lockport, and Sterling companies transferred all their assets, rights, licenses, and properties to the respondent." Now, as a matter of fact, Mr. Baldwin, that bond issue was not accomplished until after the transfer of these properties to the Thatcher Manufacturing Co., was it?

Answer. Some months afterward; yes, sir.

Question. The bond issue—the bond documents—were dated back to what date?

Answer. April 1.

Question. 1920?

Answer. 1920.

Question. But the transaction was not completed until some time when?

Answer. It was, I think, about the 25th or 26th of August.

Question. 1920?

Answer. 1920.

Question. In paragraph 17 of the complaint it is stated, in substance, that the respondent caused the assets, rights, property of the Travis, Essex, Lockport, and Sterling companies to be conveyed to it, the respondent. Now, as a matter of fact, leaving out the Stirling company, did the Thatcher company or the gentlemen who owned the stocks of th se three other companies cause that transfer?

Answer. They did not own the stock of either of those companies outside of the Sterling.

Question. That is, the Thatch r Manufacturing Co. didn't?

Answer. That is right.

Question. So that they didn't cause the transfer. The transfer was caused by the individuals who owned the stock?

Answer. Yes.

Question. All the machinery licensed by Thatcher Manufacturing Co. from Owens company and Hartford-Fairmont is, as I understand it, covered by United States patents?

Answer. It is.

Question. Patented machinery?

Answer. It is.

Question. You said a while ago, Mr. Baldwin, that you never held a majority of the voting stock of the Thatcher company.

Answer. I never did; no, sir.

Question. Have any others, so far as you know?

Answer. No. I was the largest stockholder.

Question. Would it be now possible to so segregate the assets that were taken over by the Thatcher company from the four companies—Hamilton, Lockport, Travis, and Essex—as to restore the status quo which existed when that transfer was made?

Mr. BRINDLEY. We object to that question because it is calling for a conclusion of the witness.

Examiner SHEPPARD. That is a direct response to our allegation. Let him answer.

Answer. No, sir; I do not think it could be.

Mr. SMITH. Those assets being changed very considerably in form, I take it?

Answer. Very materially—they are all mixed together.

Question. The capital stocks of the Essex, Travis, Lockport, and Sterling companies no longer exist, I understand?

Answer. No, sir; they do not.

Mr. SMITH. That is all, Mr. Examiner.

Examiner SHEPPARD. Mr. Brindley, I want to ask Mr. Baldwin a few more questions and perhaps you would like to have me get mine in before you cross-examine him.

Mr. BRINDLEY. As you wish.

Examiner SHEPPARD. Just a few questions, Mr. Baldwin. Mr. Baldwin, where did the money come from which was paid by you and your associates to Mr. Libbey and Mr. Ford when they withdrew?

Answer. There was no money paid to Mr. Ford. After a time, I thought it was not until September, but my attorneys tell me I am

mistaken—the Thatcher Manufacturing Co. paid Mr. Libbey in June, I think it was, the $250,000 and interest on his stock.

Question. And the same was done with Mr. Ford?

Answer. There was not any money paid to Mr. Ford. He put in no money.

Question. Who took care, then, of the note by Mr. Ford to the Guaranty Trust Co.?

Answer. Eventually it was paid by Thatcher Manufacturing Co. out of the proceeds of these bonds.

Question. I see. It virtually and, as a matter of fact, the Thatcher Manufacturing Co. took care of the obligations of both of these gentlemen?

Answer. They did; yes, sir.

Question. Now, Mr. Baldwin, what effect on the stockholders of the Thatcher Manufacturing Co. was had—I mean the individual stockholders in your company—by the acquisition of the properties—physical assets, etc., of the companies here mentioned?

Answer. Well, as it has turned out, it has been quite beneficial for them.

Question. I did not mean in that way, Mr. Baldwin. I mean those you had—stockholders of the Thatcher Manufacturing Co. individually holding so much stock. You acquired by the purchase of these other three companies—the Essex, Lockport, and Travis—a million or more dollars more of assets than you had in your old organization.

Answer. Yes, sir.

Question. Was there any additional stock issued by the Thatcher Manufacturing Co. to the stockholders of record prior to the junction of these other companies?

Answer. You mean as a stock dividend?

Question. Yes, I mean as a stock dividend?

Answer. No, sir; there has never been a stock dividend in our company.

Question. Well, did the addition of these three other companies make any change in the amount of your capital stock?

Answer. We reorganized our companies.

Question. When was that reorganization?

Answer. It was in June, 1920. I do not remember the exact date.

Question. Under your reorganization was the new distribution of stock to give the stockholders of record of the Thatcher Manufacturing Co. prior to the incorporation of the three companies—Travis, Essex, and Lockport—the benefit of the acquisition of this additional stock?

Answer. No.

Question. What arrangement was made so as to reflect to the stockholders any benefits from the acquisition of these three companies?

Answer. The increase of their stock—the value of their stock.

Question. So a stockholder who had, say, 10 shares prior to the acquisition of these three companies, would only have the same amount afterwards? Is that so?

Answer. He would have, in my judgment, the value and if he had undertaken to have sold it he could not have got $100 for 4.4 shares—in fact, some of the stock was sold for less than that after that.

Question. Well, then, you would say the acquisition of these three companies enhanced the value of your stock or decreased it?

Answer. As it has developed, it has enhanced it.

Question. So a man who had 10 shares of stock prior to the acquisition of these companies, his stock is worth more to-day than it was then?

Answer. Yes, sir; it is. We have made money all the time.

Question. Now, coming again to the occasion when Mr. Libbey and Mr. Ford, under their agreement, withdrew from their part of the procedure. That left you as the sole owner, personally, of the three companies mentioned and a half interest in the stock of the Sterling Glass Co., the other half being owned by the respondent, the Thatcher Manufacturing Co., amounting to $250,000. Is that correct?

Answer. That is correct. Of course, I would put it "the equitable owner."

Question. Now, when Mr. Libbey and Mr. Ford retired from their interests or their liabilities under the two notes that they had given to the bank——

Answer. Three notes.

Question. Well, they were on two?

Answer. They had indorsed the other.

Question. All right. Make that three notes—you and your associates made three notes. You under your contract assumed their rights and benefits and liabilities under the three notes?

Answer. Yes, sir.

Question. So you, therefore, and the respondent were entirely liable on the whole contract—the respondent to the extent of $250,000 from its interest in the Sterling company?

Answer. I should think so; yes, sir.

Question. And subsequently thereto you transferred your interests entirely to the Thatcher Manufacturing Co., merging the entire interest in the respondent. Is that correct?

Answer. I afterwards had the companies which I controlled transfer their assets to the Thatcher Manufacturing Co. There was no formal transfer by me of anything to the Thatcher Manufacturing Co.

Question. Yet you were the owner of the assets of all three of these companies?

Answer. I was, and had the companies themselves transfer their assets to Thatcher Manufacturing Co.

Question. Was there any valuable consideration given at that transfer?

Answer. Well, they were giving us the mortgage and paying the notes and assuming the debts.

Question. I mean, Mr. Baldwin, that you, as the majority owner of the assets of the three companies, obtained from you, having paid therefor the interests of Ford and Libbey. Now, when you, individually, or the three companies as a unit which, as appears to have been the case, transferred their interest to the respondent, was there any valuable consideration offered to you for your interest?

Answer. No money or property was transferred to me. They were to include these properties in their mortgage and issue bonds upon it and to pay the notes and the indebtedness on which I was liable.

Question. I want to know a little bit more about this. You say these three companies gave a mortgage?

Answer. No, sir; I said that the Thatcher Manufacturing Co. gave a mortgage and issued its bonds.

Question. So, after all, and as a matter of fact, the respondent did by the issuing of the $2,000,000 bond issue, take up your obligation—your personal obligation—on the three notes with which you purchased the stock of the three companies—Essex, Travis, and Lockport—and also covered the interest which had been assumed by the respondent in the Sterling Glass Co.; that is, the $250 000 interest?

Answer. I will answer it in this way: The proceeds of that bond issue with other money paid these notes and other indebtedness that I was liable upon. Thatcher Manufacturing Co. was not paid back the $250,000—it simply had that in as an investment. That is the way I understand it, Mr. Examiner.

Question. Thatcher Manufacturing Co., or the respondent, had $250,000 invested in the Sterling Glass Co., didn't it?

Answer. Yes, sir.

Question. What became of that interest when the Sterling company was dissolved?

Answer. There wasn't anything ever paid back to the Thatcher Manufacturing Co.

Question. That $250,000 was represented in stock, wasn't it?

Answer. Yes.

Question. What became of it when the stock was disbanded—thrown away?

Answer. The Thatcher Manufacturing Co. had it; there is no question about that.

Question. I think so, too.

Answer. What you were getting at is perfectly correct, but the wording of that they weren't paid back——

Question. We have everything accounted for except the $250,000 of stock issued by the Sterling company, which seems to have dissolved into thin air, and I want to know——

Answer. I will say that the Thatcher Manufacturing Co. had it.

Question. You mean the assets?

Mr. SMITH. You mean the assets?

Answer. Yes.

Examiner SHEPPARD. So now, as a matter of fact, and at present, the entire assets—physical and otherwise, tangible and otherwise, good will, etc.—of the Essex, Travis, and Lockport companies are vested in the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Cross-examination:

Mr. BRINDLEY. I believe it will be advisable for me to trace again, at least to a certain extent, this transaction. It may be necessary for me to rehearse something that we have already gone over, but I am not doing it for the purpose of lengthening the record but to make it clear, at least, to myself. Mr. Baldwin, I believe you stated yesterday that when you first conferred with Mr. I. T. Axton in regard to the transaction which he submitted to you that you did not know that Mr. Axton held or possessed a cash option on the stock of

Travis, Essex, Lockport, and Woodbury companies and the milk-bottle business and license and machine of the Hamilton company?

Answer. I did when he came and asked me to take hold of it.

Question. You did not know that at your first conference with Mr. Axton?

Answer. I knew at the first talk I had with Mr. Axton. We did not have much of a conversation. I supposed at that time that it was simply the Travis and Lockport and the cash option on the Essex Glass Co., and the Hamilton milk-bottle business and machine. They told me that at that time. I did not know at that time and for some time after that he had a cash option on the Woodbury Glass Co., the Travis Glass Co., and the Lockport Glass Co.

Question. Subsequent to your first meeting with Mr. Travis did you not ascertain that he possessed a cash option on the capital stock of the Travis, Essex, Lockport, and Woodbury companies?

Answer. Some time after, yes, sir.

Question. You also ascertained that he had an option or a contract or agreement which covered the milk-bottle business and the Hartford machine and license held by the Hamilton company?

Answer. Yes, sir, and the Essex company.

Question. Pursuing your negotiations with Mr. Axton, it was finally agreed that you would meet at the office of the Guaranty Trust Co., of New York, in New York City in August, 1919, and close the transaction, was it not?

Answer. Yes, sir.

Question. Now, on August 27 and 28, 1919, you and Mr. Libbey and Mr. Ford met Mr. Axton and some other stockholders of the four companies at the Guaranty Trust Co., in New York City?

Answer. No, sir.

Question. It was agreed then that you and your associates would meet at the Guaranty Trust Co. in New York City the 27th and 28th of August, 1919?

Answer. Yes, sir.

Question. And you met there that day?

Answer. Yes, sir.

Question. At the same time with Mr. Axton and the persons who held, owned, or controlled the stock in the Travis, Essex, and Lockport and Woodbury companies were also in New York City at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. You and your associates had advised Mr. Axton that you would complete the transaction that day?

Answer. Yes, sir.

Question. The transaction which you were to complete with Mr. Axton was the purchase of the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos., was it not?

Answer. Yes, sir.

Question. On the 28th day of August, 1919, three notes were executed by you and Mr. Libbey and Mr. Ford to the Guaranty Trust Co., as receipted in the agreement dated August 28, 1919?

Answer. Yes, sir.

Question. A note was made by you, and another by Mr. Libbey, and another by Mr. Ford?

Answer. Yes, sir.

Question. All payable to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Each of you indorsed the notes of the other two, also?

Answer. Yes, sir.

Question. And all three of you were equally bound on all three notes?

Answer. Yes, sir.

Question. These notes amounted in the aggregate to $1,610,000, did they not?

Answer. Yes, sir.

Question. And that amount of money was advanced by the Guaranty Trust Co.?

Answer. Yes, sir.

Question. In addition to that sum, there was also in New York at the Guaranty Trust Co. the sum of $500,000 secured by the sale or issuance of stock in the Sterling Glass Co.?

Answer. Yes, sir.

Question. The money derived from both sources was then and there used to purchase all the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos., was it not?

Answer. Yes, sir; I think that is correct.

Question. Some officer or agent of the Guaranty Trust Co. met Mr. Axton and the other stockholders of the four companies and delivered to them the amounts to which they were respectively entitled for the stock respectively held by them?

Answer. Yes, sir.

Question. And the stock in the four companies was duly indorsed in blank at that time or prior thereto by the respective holders of the stock in the four companies?

Answer. Yes, sir.

Question. And the stock in the four companies was delivered to the Guaranty Trust Co. and held by it as collateral security for the three notes given by you, Ford, and Libbey?

Answer. Yes, sir.

Question. Then, immediately following that transaction, the contract of August 28, 1919, a copy of which is attached to the stipulation as Exhibit G, was entered into by you, Libbey, Ford, and the Sterling Glass Co.?

Answer. Yes, sir.

Question. The transaction at the Guaranty Trust Co. on August 28, 1919, was the acquisition of the stock in the Travis, Essex, Lockport, and Woodbury companies, was it not?

Answer. Yes, sir.

Question. I believe you stated that the notes given by you, Libbey, and Ford to the Guaranty Trust Co. on August 30, 1919, were demand notes?

Answer. Yes, sir.

Question. But that you had an agreement by which the loan would be carried by the Guaranty Trust Co. for at least a year?

Answer. No. For one year. No "at least."

Question. Was there ever any change in these notes or the giving of other notes in place of the three first given by you, Ford, and Libbey to the Guaranty Trust Co.?

Answer. No, sir.

Question. Then the notes given by you on the 28th of August, 1919, remained with the Guaranty Trust Co. until they were paid out of the proceeds of the bond issue and the increase in the capital stock of the Thatcher Manufacturing Co.

Answer. Yes, sir.

Question. And these three notes to the Guaranty Trust Co. were paid entirely out of the proceeds from the Thatcher Manufacturing Co. bond issue and the increase in capital stock of the Thatcher Manufacturing Co.?

Answer. And profits—the money of Thatcher Manufacturing Co.; yes, sir.

Question. The money of the Thatcher Manufacturing Co. paid and discharged these three notes?

Answer. Yes, sir.

Question. It was agreed between you and Mr. Libbey, as recited in the contract of August 28, 1919, that in a certain event he might retire from the transaction?

Answer. Yes, sir.

Question. That agreement is recited in the contract of August 28, 1919?

Answer. Yes, sir.

Question. And, as recited in that contract, it referred to the fact that he wished to bring into the transaction the Hartford-Fairmont patents?

Answer. Yes, sir.

Question. Now, that expected bringing in of the Hartford-Fairmont patents or interests was not consummated?

Answer. No, sir.

Question. And in accordance with the agreement and the contract, Mr. Libbey and Mr. Ford desired to retire?

Answer. Yes, sir.

Question. Can you recall the date, or approximately the date, when Mr. Libbey ascertained that he could not secure the Hartford-Fairmont interests?

Answer. No; I can not give the date. He could have secured it, but he could not quite agree on price.

Question. Can you tell us approximately when it was that he abandoned the idea of securing the Hartford-Fairmont interests?

Answer. No; I do not think I can. I think it was some little time after the giving of this note. It was, of course, between then and December 11, 1919, when he notified me that he would not go on.

Question. So, prior to December 11, 1919, it was determined, at least, that Mr. Libbey could not acquire those interests?

Answer. Yes, sir.

Question. Then Mr. Libbey and Mr. Ford gave the notices dated December 11, 1919, copies of which are attached to the stipulation as Exhibits I and J?

Answer. Yes, sir.

Question. Now, you received the original of Exhibits I and J?

Answer. I did.

Question. After the receipt of the notices from Mr. Libbey and Mr. Ford dated December 11, 1919, was there any change in the situation or the notes at the Guaranty Trust Co.?

Answer. No, sir. I went to see Mr. Libbey and told him that this put a different aspect on the case for me, which he readily saw, and asked him if he would not allow his name to continue there as security, and he said he would—he would give me reasonable time to get out of the matter. We had a very friendly talk and he allowed it to continue.

Question. And so the three notes originally given to the Guaranty Trust Co. by you and Mr. Libbey and Mr. Ford simply remained with and at the Guaranty Trust Co. until they were finally paid by the bond issue and stock increase of the Thatcher Manufacturing Co., did they not?

Answer. Yes, sir.

Question. On January 1, 1920, it was known by you that Mr. Libbey and Mr. Ford would not remain in the transaction with you in the acquisition of the stock of the four companies?

Answer. Yes, sir.

Question. And subsequently to January 1, 1920, you, of course, were very much interested and engaged in the question of financing the proposition and discharging the obligations of yourself, Mr. Libbey, and Mr. Ford to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Please examine Exhibit M of the stipulation. Can you identify that Exhibit M?

Answer. Yes, sir; I guess so.

Question. What is it?

Answer. It is a special meeting of the stockholders of Thatcher Manufacturing Co. held at the office of the company in Elmira, N. Y.

Question. It is a copy of the minutes of that special meeting?

Answer. Yes, sir.

Question. Now, what was provided at that special meeting of April 12, 1920? Just tell the purpose for which it was called and what principal transaction occurred that day.

Answer. The purpose of the meeting was to increase the capital stock from $1,000,000, consisting of 10,000 shares of par value of $100, to $1,625,000, to consist of 16,250 shares of the par value of $100 each, and a resolution was offered and adopted increasing it.

Question. Now, how much increase in the capital stock of the Thatcher Manufacturing Co. did that amount to, in dollars?

Answer. It amounted to $625,000.

Question. Now, is that the increase in capital stock to which you have heretofore referred?

Answer. Yes, sir.

Question. The stock of the Thatcher Manufacturing Co. was accordingly duly increased in accordance with that special meeting of April 12, 1920?

Answer. It was. I could not state whether all of that was sold or not. Yes; it was all sold—it brought in $625,000.

Question. Now, examine, please, Exhibit L of the stipulation and see if you can identify Exhibit L.

Answer. Yes, sir.

Question. That is a copy, as stipulated, of the agreement between you, Hemphill, Noyes & Co., and Bonbright & Co.?

Answer. Yes, sir.

Question. You will observe that paragraph 1 of that agreement recites that the "seller"—yourself—proposed to cause the corporation to increase its stock as recited in paragraph 1?

Answer. Yes.

Question. And now that stock increase was accordingly carried out?

Answer. Yes, sir.

Question. You will observe further in Exhibit L, in paragraph 5, that it is provided that the "seller" should also cause the corporation to authorize, make, and execute an issue of $2,000,000 of corporate bonds?

Answer. Yes, sir.

Question. Now, that bond issue of $2,000,000 as provided in that agreement was also carried out, was it not?

Answer. It was.

Question. And the bonds were issued and sold?

Answer. Yes, sir.

Question. Now, the reorganization of the corporation to which you have heretofore referred was carried out in accordance with that agreement, as set forth in the agreement of April 10, 1920, between you and Hemphill, Noyes & Co. and Bonbright & Co., was it not?

Answer. Yes, sir.

Question. You had agreed, as recited in the contract between you, Libbey, and Ford and the Sterling Glass Co. of August 28, 1919, to take up or assume the liability of Ford and Libbey, as provided in that contract in the event they wanted to withdraw?

Answer. Yes, sir.

Question. In addition to agreeing to hold them harmless from liability on the three notes to the Guaranty Trust Co., you also agreed to repay to Mr. Libbey the $250,000 he had invested in the stock of the Sterling Glass Co., did you not?

Answer. Plus the interest; yes, sir.

Question. Now, Mr. Libbey was not immediately paid that money for his interest?

Answer. No, sir; he was not.

Question. In other words, he waited until you carried out that financial transaction evidenced by the increase in the stock of the Thatcher Manufacturing Co. and the bond issue of $2,000,000?

Answer. Yes, sir.

Question. From what source was Mr. Libbey repaid his $250,000 invested in the capital stock of the Sterling Glass Co.?

Answer. He was paid by check of the Thatcher Manufacturing Co. out of its profits and sales of stock.

Question. According to the best of your recollection, was Mr. Libbey repaid for his investment in the stock of the Sterling Glass Co. prior to the bond issue of the Thatcher Manufacturing Co.?

Answer. As refreshed by what I am told; yes.

Question. So, it is true, is it not, as a matter of fact, that the investment of $250,000 of Mr. Libbey in the stock of the Sterling Glass Co. was paid by the money of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And, thereupon, the Thatcher Manufacturing Co. became the owner of the stock in the Sterling Glass Co. held by Mr. Libbey?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. was then the owner of all of the stock of the Sterling Glass Co. except about eight shares issued to officers, agents, or employees of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. For the purpose of qualifying directors and officers?

Answer. Yes, sir.

Question. The $2,000,000 bond issue was finally completed and the proceeds were delivered to the Thatcher Manufacturing Co., were they not?

Answer. Yes, sir.

Question. Now, what disposition was then made of the large part of those proceeds?

Answer. I paid the notes—those three notes—that was the first thing I did——

Question. The first thing you did with the proceeds was what?

Answer. I paid the three notes which have been referred to as given August 28, 1920.

Question. By you, Ford, and Libbey?

Answer. Yes, sir.

Question. The first job you did after getting the proceeds of the $2,000,000 bond issue was to pay the notes at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And that was paid, now, by the funds of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And those notes were paid and discharged?

Answer. Yes, sir.

Question. Now, what disposition was made of the stock attached to those notes, when the notes were paid?

Answer. The companies had been dissolved—there was no stock.

Question. Had they actually been dissolved at that date?

Answer. Yes, sir.

Question. State to the best of your recollection when you paid the three notes given to the Guaranty Trust Co.?

Answer. The last of August, 1920—somewhere from the 25th to the 27th, I should say. I know it was on a Saturday.

Question. What was delivered to you when you paid the three notes at the Guaranty Trust Co.?

Answer. Frankly, I do not know that there was anything delivered. I assume they delivered the stock of those companies to us and canceled the notes—I photographed the canceled notes. I simply remember the canceled notes and the photographs of them, but the stock, I do not remember—I believe it was all delivered to Mr. Mandeville——

Question. Who was with you at the time?

Answer. Mr. Mandeville.

Examiner SHEPPARD. Was Mr. Mandeville at that time a vice president of the Thatcher Manufacturing Co.?

Answer. I think he was.

Question. And also its counsel?

Answer. Yes, sir.

Question. Mr. Baldwin, please look at Exhibit S of the stipulation?

Answer. Yes.

Question. Can you identify Exhibit S?

Answer. Yes, sir.

Question. You will observe from Exhibit S that it is a notice addressed to the Travis Glass Co. and the board of directors there and is signed by H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver and that they certify in Exhibit S that they have acquired all the shares of the capital stock of the Travis Glass Co.?

Answer. Yes, sir; it so certifies here.

Question. Now, Mr. Travis was one of the original stockholders in the Travis Glass Co. who sold the stock on August 28, 1919, was he not?

Answer. Yes, sir.

Question. Who is P. W. Robinson?

Answer. He is president of a bank and was one of the Travis Glass Co.'s directors in Clarksburg, W. Va.

Question. And he also sold his stock on the 28th day of August, 1919?

Answer. Yes, sir.

Question. Now, Exhibit S recites that F. E. Baldwin, F. L. Collins, and R. W. Niver are also among the stockholders of the Travis Glass Company?

Answer. Yes, sir.

Question. When did they become stockholders of the Travis Glass Co.?

Answer. I can not tell you.

Question. Can you approximate the time?

Answer. I can not. I have no memory in regard to the transaction. Mr. Mandeville took care of the matter and he did what he said. I assume that stock was transferred to us.

Question. Do you recall whether or not you individually put any money or other consideration in any of the stock of the Travis Glass Co.?

Answer. I do not.

Question. Is it not a fact that the capital stock of the Travis, Essex, Lockport, and Woodbury companies was acquired on the 28th day of August, 1919, the same being acquired at the Guaranty Trust Co., of New York?

Answer. Why, it would seem to me to follow as a matter of law, although I have no recollection of the matter at all. We paid the notes and eventually took the stock.

Examiner SHEPPARD. Repeat the question.

(Question repeated.)

Answer. Yes, I think that is right. I thought you said 1920. I misunderstood your question.

Question. The fact is that the stock of the Travis, Essex, Lockport, and Woodbury companies was acquired from the then owners of it or former owners of capital stock in these companies at New York City on August 28, 1919?

Answer. Yes, sir.

Question. Now, this stock was acquired from the proceeds of the three notes above mentioned and the $500,000 of the Sterling Glass Co.?

Answer. Yes, sir.

Question. Now, at that time, the Travis Glass Co., the Essex Glass Co., and the Lockport Glass Co. were engaged in the manufacture and the sale of milk bottles in competition with each other and with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. That is a fact, is it not?

Answer. That is a fact, yes, sir; and other manufacturers.

Question. On August 28, 1919, the Thatcher Manufacturing Co. was engaged in the manufacture and the sale of milk bottles in interstate commerce with the Travis, Essex, and Lockport Glass Cos., was it not?

Answer. Yes, sir; and others.

Question. And others as well. Now, you say that on the 28th day of August, 1919, the Woodbury Glass Co. was not engaged in manufacturing and selling milk bottles?

Answer. No, sir; they were not; no, sir.

Question. And you also say that on that date the Woodbury Glass Co. was not in competition with the Thatcher Manufacturing Co. or the Travis, Essex, or Lockport companies or either of them?

Answer. No, sir; it was not.

Question. But the stock of all four companies was acquired on the same day and at the same time and by the same transaction, was it not?

Answer. Yes, sir.

Question. Now, the stock of all four companies was also left at the Guaranty Trust Co., of New York City, as collateral security for the three notes given by you, Mr. Libbey, and Mr. Ford, was it not?

Answer. Yes, sir.

Question. Now, where is the stock of the Woodbury Glass Co. now held or owned?

Answer. The Thatcher Manufacturing Co. owns the common stock of the Woodbury Glass Co. excepting the few shares that are put in the names of other people for officers.

Question. So, the Thatcher Manufacturing Co. is really the owner of the common stock of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Woodbury Glass Co. has not been dissolved and is in existence to-day?

Answer. It is.

Question. And is also making and selling glass bottles?

Answer. Yes, sir.

Question. But is not making milk bottles?

Answer. Not making milk bottles.

Question. And so it was not dissolved as a corporation?

Answer. No, sir. It was run as a separate corporation.

Question. Now, the Travis Glass Co., the Essex Glass Co., and the Lockport Glass Co. have been dissolved, have they not?

Answer. Yes, sir.

Question. They are no longer in existence?

Answer. No, sir.

Question. Subsequent to the acquisition of the stock in the four companies at the Guaranty Trust Co. on August 28, 1919, did you meet the stockholders who had disposed of their stock?

Answer. Yes, sir; I met those that were there.

Question. You met those that were present?

Answer. Yes, sir.

Question. Now, at that time did you make any statement to them regarding the continuation of the business and the organization of the companies?

Mr. SMITH. May I ask the purpose of that, Colonel?

Mr. BRINDLEY. I understand that after the transaction was completed, Mr. Baldwin went into the stockholders there and had some talk with them and that on that day or some time subsequently—this is what I want to get at—the resignations of the officers and directors of the various companies were made in writing and given to Mr. Baldwin to be exercised at his option.

Mr. SMITH. You just want to bring out the fact of the resignations?

Mr. BRINDLEY. Yes, sir.

Question. I was just going to ask if you met them and made any statement?

Answer. Yes, sir; I did.

Question. And was anything done at that time with reference to the officers of the several companies?

Answer. Their resignations had been transferred with their stock, but they weren't accepted.

Question. The resignations of the officers of the various companies as given to you to be exercised at your option, as I understand the matter; is that correct?

Answer. Yes, sir; that is correct.

Question. Do you know the signature of Mr. H. C. Mandeville?

Answer. I surely do.

Question. Examine that document which I hand you and see if you can identify the signature attached to it?

Answer. I can.

Question. Whose signature is that?

Answer. H. C. Mandeville's.

Question. Identify the document which you hold in your hands and describe it?

Answer. It is dated April 28, 1921. It is a letter to the Federal Trade Commission, Adrian F. Busick, Esq., acting general counsel, Washington, D. C.

Question. And that letter is signed by whom?

Answer. H. C. Mandeville.

Question. Is that Mr. Mandeville's signature to that letter?

Answer. It is.

Question. At the date of that letter what position did Mr. Mandeville occupy with the Thatcher Manufacturing Co.?

Answer. Vice president.

Mr. BRINDLEY. I offer in evidence a letter written at Elmira, N. Y., dated April 28, 1921, addressed to the Federal Trade Commission, Adrian F. Busick, Esq., acting general counsel, Washington, D. C., and signed Thatcher Mfg. Co., H. C. Mandeville, vice president. I offer this as Commission's Exhibit No. 1 to the testimony of the witness Francis E. Baldwin.

Examiner SHEPPARD. Any objection, Mr. Smith?

Mr. SMITH. No objection.

Examiner SHEPPARD. All right, let it be received in evidence.

Mr. BRINDLEY. That will be all for the present, Mr. Examiner.

Mr. SMITH. I have nothing further at this time.

Examiner SHEPPARD. I have nothing further at this time, so we will take an adjournment until 2 o'clock this afternoon.

Now, to wit, 12.40 o'clock p. m. same day, adjourned until 2 o'clock p. m. same day.

ELMIRA, N. Y., *August 15, 1922.*

Met pursuant to adjournment, 2 o'clock p. m.

Before: W. W. Sheppard, examiner.

Appearances: Mr. Smith for the respondent; Mr. Brindley for the commission.

Francis E. Baldwin resumed the stand, and further testified as follows:

Redirect examination.

Mr. SMITH. Mr. Baldwin, you have already testified that to the best of your recollection the notes to the Guaranty Trust Co. were taken up some time during the end of August, 1920?

Answer. Yes, sir.

Question. I show you a check drawn by the Thatcher Manufacturing Co. to the Guaranty Trust Co. dated July 3, 1920, for $1,634,955 and ask you if that refreshes your recollection as to the date when these notes were paid?

Answer. Yes, it does, and I now remember it was paid on the 3d day of July—on Saturday—the day before the 4th, 1920.

Mr. SMITH. That will be all, Mr. Baldwin.

HUBERT C. MANDEVILLE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

Mr. SMITH. Your full name, please?

Answer. Hubert C. Mandeville.

Question. Of Elmira, N. Y.?

Answer. Yes, sir.

Question. Your profession is attorney at law and you are now the vice president and general counsel of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And prior to 1920 you were the general counsel but not the vice president?

Answer. Yes, sir.

Question. You were actively engaged in the general transaction that has been discussed here—of the acquisition of these various companies?

Answer. Yes, sir.

Question. I suppose as actively as anybody except, possibly, Mr. Baldwin?

Answer. Yes, sir.

Question. When you first started this transaction in August, 1919, it was one of the important factors in the proposed plant that the Hartford-Fairmont Co. or its main patent rights should be acquired?

Answer. Mr. Libbey made that a condition.

Question. And if that had been done Mr. Libbey would have remained in the transaction—he would have remained liable on his note and would have been an active party in the transaction?

Answer. Either he or some interest of his.

Question. Possibly the Owens Bottle Co., or something of that sort?

Answer. Yes. I don't know how—it was not discussed.

Question. In other words, the factor of the Hartford-Fairmont patents was extremely important as being the condition, really, of Mr. Libbey's interest in this whole transaction?

Answer. Why, yes, sir, to such an extent that in the beginning he insisted upon both the Hartford-Fairmont patents and the exercise of those options should be one transaction until I pointed out to him that the time was so short that it could not be accomplished. Then he sent his own attorney to see me, with Mr. Ford, and insisted that they should all be done at once and I said that we could not—if it was insisted upon we would have to drop the whole matter. The attorney and Mr. Ford went back and reported, and Mr. Libbey wired me that I could go on with the transaction separately.

Question. You remember, of course, as I remember it, that it took a pretty long series of negotiations to come to a final windup of the Hartford-Fairmont proposed purchase from the time we made the August 28 contract?

Answer. From the time we made the August 28 contract until almost the rest of the year I was in almost constant negotiation with the Hartford-Fairmont officials trying to produce an arrangement by which the Hartford-Fairmont Co.—its patents—could be purchased and did get an agreement—an offer—which was not accepted by Mr. Libbey and his associates.

Question. It was a pretty complex situation to get rid of?

Answer. It was.

Question. Then, when the Hartford-Fairmont proposition fell through and Mr. Libbey resigned it threw the weight—practically all of this very large deal and obligations that had been incurred—upon Mr. Baldwin personally?

Answer. Yes, sir.

Question. And then what was your immediate and most urgent task?

Answer. I had great anxiety and a sense of responsibility that some way must be found for Mr. Baldwin to discharge his obligations.

I had been his advisor when he got into this affair and I must find some way by which he could get out and pay his obligations.

Question. Just to button up one thing—Mr. Baldwin's agreement to assume all the liability as in that contract of August 28, 1919, was, I suppose, put there under his impression that the Hartford-Fairmont deal would probably go through and, therefore, he would not have to assume the liability?

Answer. Well, I do not know what his impression was.

Question. I meant the impression of the whole of them?

Answer. The August 28 contract was drawn so that if we could get it through satisfactorily to Mr. Libbey, it would go through and if it didn't we would have to get it—undertake it ourselves.

Question. He took the chance?

Answer. Yes, Mr. Baldwin took that chance.

Question. You were anxious to get Mr. Baldwin released in some way from this obligation, and what was your course?

Answer. Well, my first course was to find out what the joint assets of the companies, exclusive of the Thatcher, were, with reference to the sort of a financial set-up I could make of the companies exclusive of the Thatcher, with a view of borrowing money on their responsibility.

Question. Your first move left Thatcher out of it entirely?

Answer. Yes, and I had the plan of making a first and second preferred stock and getting Mr. Libbey to take the second preferred, and I made my figures on that plan in the beginning and saw Mr. Libbey about it and he refused to do it. I had a great many plans—I do not know that they are material now—of trying to finance these companies.

Question. Then it seems obvious from what you have said that certainly on August 28, 1919, and from that time to Mr. Libbey's withdrawal and for some time thereafter neither you nor Mr. Baldwin had any sort of assurance or certainty of any sort that the Thatcher Manufacturing Co. could take over this matter or in any way help Mr. Baldwin out.

Answer. Up to Mr. Libbey's withdrawal both Mr. Baldwin and I were following the leadership of Mr. Libbey, believing that he had his own plans, and those plans were discussed—they would be the taking in of the Thatcher company into some other company, and we talked about how the value of the Thatcher Manufacturing Co. should be determined, but nothing came of that. After his withdrawal, then it became our own burden, and Mr. Baldwin and I were in New York quite often together, and I know it was weighing on Mr. Baldwin's mind because of his physical condition, and my mind—I knew myself it was a very serious time for the both of us and a very hard time to finance anything because of the then financial condition.

Question. Had you had any assurance or certainty that the Thatcher company could finance it, would you have had any such anxiety?

Answer. If it is permissible for me to tell the conversations between Mr. Baldwin and myself on that subject, I will be glad to do it.

Examiner SHEPPARD. That is not admissible as testimony, but I will be glad to go on with mutual consent.

Mr. BRINDLEY. All right.

Answer. Mr. Baldwin and I discussed the question of offering these assets of these companies to the Thatcher company, and Mr. Baldwin pointed out that the Thatcher company's stockholders included many women and people who were dependent upon an income from the company and that he had always kept the Thatcher company safe and sound and a reliable investment and that he could not and would not bring any proposition to the Thatcher company until it was in a definite form and could be financed and could be presented so as to be advantageous to the Thatcher company. That was between——

Mr. SMITH. December 11, 1919, and the raising of the final bond issue?

Answer. Yes.

Mr. SMITH. I think I have covered everything I wish to ask. Is there anything you wish to say, Mr. Examiner?

Examiner SHEPPARD. Mr. Mandeville, you have been intimately connected with Mr. Baldwin and with the affairs of the Thatcher Manufacturing Co. for a number of years, haven't you?

Answer. I have been very much of a friend of Mr. Baldwin for many years, but I was not connected with the Thatcher company until a comparatively short time before these negotiations.

Question. How long have you been a stockholder in the company?

Answer. Now, about four years, as I recall it.

Question. So you had nothing to do with the company when it was first organized and started in the business?

Answer. No, sir; but I have since traced all the corporate history of the company and have it here if you wish it.

Question. No. I just want to know how long you have been associated with it. Now, can you tell me and through me the commission if it was Mr. Baldwin's intention to personally acquire as his own interest the assets and physical properties and stock of the Travis, Essex, and the Lockport companies in 1919?

Answer. Well, my answer to that is that the intention was of forming a large company that would include these companies, with the Hartford-Fairmont patents, when the negotiations began.

Question. And he was going to do that—that reorganization of all these companies—by taking over these three companies personally, himself?

Answer. In the beginning, jointly with Mr. Libbey—it was a joint enterprise with Mr. Libbey, Mr. Baldwin, and Mr. Ford was brought in as Mr. Libbey's financial man.

Question. So that the first intention that you personally know such to be was to the extent that the Thatcher Manufacturing Co. was not to have any interest in the acquisition of these three companies?

Answer. No, sir. On the contrary, the proposed large company that was to be formed might afterwards buy the Thatcher.

Question. Now, was it a fact that Mr. Libbey and Mr. Ford failed, or rather elected to take their option to retire under the contract, that the intention was afterward changed to allow the intervention financially of the respondent?

Answer. Well, after the withdrawal of Mr. Ford and Mr. Libbey, Mr. Baldwin had to take it personally or get it in such shape that he

could offer the assets to the Thatcher company. He had to do one thing or the other.

Question. So, it was then that it was determined by the officers and controlling members of the Thatcher Manufacturing Co. to allow the intervention of the respondent to get Mr. Baldwin out of his difficulties; isn't that true?

Answer. It was a forced conclusion.

Mr. SMITH. That conclusion was not come to until you found that you could accomplish this bond issue?

Answer. Yes, sir.

Cross-examination:

Mr. BRINDLEY. How long have you been practicing law, Mr. Mandeville?

Answer. Over 20 years.

Question. You are engaged in the general practice of the law?

Answer. Yes, sir.

Question. You were present at the Guaranty Trust Co. in New York City on August 28, 1919?

Answer. Yes, sir.

Question. Who drew the contract dated August 28, 1919, and signed by Messrs. Baldwin, Libbey, and Ford and the Sterling Glass Co.?

Answer. I drew it, very hastily.

Question. And at that time who was president of the Sterling Glass Co.?

Answer. I was.

Question. And it was as president of the Sterling Glass Co. that you executed the contract for the Sterling Glass Co.?

Answer. Yes, sir.

Question. It was the Sterling Glass Co. that executed it by you as president?

Answer. Yes, sir.

Question. Now, that contract of August 28, 1919, a copy of which is attached to the stipulation as Exhibit G, provided, did it not, that Libbey might withdraw from that transaction although the Hartford-Fairmont properties or patents might be acquired?

Answer. Yes, sir, if the set-up of the new company was not satisfactory to him.

Question. So that Libbey could retire, not only if they did not acquire the Hartford-Fairmont patents or interest, but also if he was not satisfied with the organization?

Answer. Yes, sir.

Question. Now, at New York on August 28, 1919, was anything acquired in addition to the stock of the Travis, Essex, Lockport, and Woodbury companies?

Answer. Yes, sir. A contract was made, I think, directly after we made the contract, Exhibit G, with Mr. Hamilton's representatives. His attorney was there from Pittsburgh and I drew them a contract between the Thatcher company and the J. T. & A. Hamilton Co. providing for the acquisition of the J. T. & A. Hamilton Co.'s license, machine, and milk-bottle business, exclusive of Allegheny County.

Question. Now, the acquiring of the Hamilton patents, etc., was by whom?

Answer. The Thatcher company.

Question. That was a part of the transaction in New York on August 28, 1919, and it was separate and distinct from the transaction between Baldwin, Ford, and Libbey on the notes and stock business?

Answer. Yes, sir.

Question. The acquisition of the Hamilton interest at that time was an acquisition running solely to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. That was no stock acquisition at all?

Answer. No, sir.

Question. The Hamilton company was simply a glass-bottle manufacturing company which was one of the licensees of the Hartford-Fairmont Co.?

Answer. It had the license for one feeder for milk bottles only.

Question. Do you recall whether or not their right to acquire the Hamilton business and license and machine was included in options or rights held by Mr. Axton?

Answer. Yes, sir; I think he had an option from the J. T. & A. Hamilton Co.

Question. He had an option on that property as he had an option or right in regard to the stock of the four companies?

Answer. Yes, sir.

Question. Please examine the document which I hand you and identify it if you can.

Answer. Yes, sir; marked "Exhibit No. 1" to the testimony of F. E. Baldwin.

Question. And what is that?

Answer. It is a letter written by me to the Federal Trade Commission through its acting counsel, Mr. Busick, in answer to inquiries from the Federal Trade Commission.

Question. You wrote that letter, did you?

Answer. Yes, sir.

Question. The statements made therein were true, according to the best of your knowledge, information, and belief, I assume?

Answer. Yes, sir.

Question. Examine Exhibit H of the stipulation heretofore referred to and identify it for us, if you can.

Answer. Exhibit H is a copy of a letter written by me to Mr. F. E. Baldwin September 2, 1919, on my return from New York after the transactions on August 28 and 29.

Question. And that letter was written by you to Mr. Baldwin, you say?

Answer. Yes, sir.

Question. That is recounting the transactions, or some of them, that occurred at New York City at the time mentioned?

Answer. Yes, sir, putting down on paper my recollection of them while they were fresh in my mind.

Question. And the statements you made in that letter are true, also, are they?

Answer. Yes, sir.

Question. In addition to drawing the contract of April 28, 1919, and executed by Baldwin, Ford, and Libbey and the Sterling Glass Co., did you, as counsel for the Thatcher Manufacturing Co., prepare the various documents attached to the stipulation and executed and signed by the stockholders of the Travis, Essex, Lockport, and Sterling Glass Cos. in reference to the dissolution of those companies and the transfer of their assets to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And at that time you were a vice president of the Thatcher Manufacturing Co. and its general counsel?

Answer. Yes, sir.

Question. And you were, of course, interested in carrying out the transaction legally and correctly?

Answer. Yes, sir.

Question. And being so interested you prepared these various documents?

Answer. Yes, sir.

Question. Now, you were present, I believe, when the three notes were executed and signed by Baldwin, Ford, and Libbey to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you know what disposition was made of the proceeds?

Answer. They were deposited with Guaranty Trust Co., and the Guaranty Trust Co., through its representative, disbursed that money to the individual stockholders of the four companies.

Question. Was any other sum or amount placed with the proceeds of the notes?

Answer. Yes, sir.

Question. What was that?

Answer. $500,000 that had been realized from the sale of capital stock of the Sterling Glass Co.

Question. Now, regardless of your conclusion or mine, the transaction in reference to stock at the Guaranty Trust Co. on August 28, 1919, was simply the acquisition of the stock in the four companies, was it not?

Answer. Yes, sir, except as to the Hamilton.

Question. Except as to the Hamilton, of course?

Answer. Yes, sir.

Question. The capital stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. was on the 28th day of August, 1919, acquired from the then owners of the stock?

Answer. Yes, sir.

Question. And that stock was paid for, as you have described, out of the proceeds of the three notes and the $500,000 of the Sterling Glass Co.?

Answer. Yes, sir.

Question. What disposition, then, was made of the stock when it was assigned or transferred or delivered from the former owners on August 28, 1919?

Answer. The certificates had been indorsed in blank and were retained by the Guaranty Trust Co., of New York, as collateral for the three notes.

Question. Do you know how long the certificates of stock left with the Guaranty Trust Co. on August 28, 1919, remained with the Guaranty Trust Co.?

Answer. They remained there for some time. I do not know—I do not now just recall the date—and then they were sent to the Second National Bank, of Elmira, N. Y., and transfers were made to different individuals nominated by Mr. Baldwin and those individuals again indorsed the stock so the certificates were indorsed in blank and returned to the Guaranty Trust Co. of New York, and remained with them until the notes were finally paid.

Question. Now, the certificates of stock when first given to the Guaranty Trust Co., of New York, as collateral security for the three notes stood in the names of the former owners of the stock?

Answer. Yes, sir.

Question. And remained in that condition until sent to Elmira, where the old certificates were canceled or returned and new certificates in lieu thereof were issued to other persons?

Answer. Yes, sir; the old certificates then were pasted in the stock books.

Question. And are there to-day, I guess?

Answer. Yes, sir.

Question. Now, do you know to whom the stock in these four companies was reissued?

Answer. Yes; I do know. Yes, sir. I could not tell you without looking at the book—I would have to refresh my recollection; as to which company to begin with, have you any preference?

Question. Any one you wish to, sir.

Answer. Refreshing my recollection from the books, the transfers I have mentioned were made about December 1, 1919—not all on the same date—some on December 5, and some on December 6, and some on December 8.

Question. Now, take up any one you may have there.

Answer. I will take the Travis company.

Question. Give us the history of the reissue of that stock.

Answer. There was one share issued to Mr. F. E. Baldwin and one share issued to Mr. Collins, one issued to Mr. Niver, one to Mr. Robinson, and one to Mr. Travis. Four hundred and ninety-five shares were issued to myself. Then, afterwards, I reissued those 495 shares that had been issued to me to Mr. Baldwin. That was on January 5—the second transaction.

Question. Now, after the certificates of stock in the Travis Glass Co. had been sent to Elmira by the Guaranty Trust Co., of New York, all the stock was reissued to the persons you named, was it?

Answer. Of the Travis Glass Co., yes, sir.

Question. Now, the dates of that reissue were when?

Answer. On December 5 all of them except the reissue by myself to Mr. Baldwin of the 495 shares. That was issued on January 5, 1920.

Question. Now, what is the total number of shares reissued here in Elmira to the parties you have named?

Answer. Five hundred shares.

Question. Did that include all of the capital stock of the Travis Glass Co.?

Answer. Yes, sir.

Question. Now, that stock was reissued and returned, as I understand it, to the Guaranty Trust Co., of New York?

Answer. Indorsed in blank ——

Question. By the respective holders?

Answer. Yes, sir.

Question. And returned to the Guaranty Trust Co., of New York?

Answer. Yes, sir.

Question. Then what disposition was made of it?

Answer. It remained there, as I understand it, until the three notes were paid; then it was turned over, as I recall it, to me.

Question. It was first reissued and sent back to the Guaranty Trust Company. How was it held there?

Answer. It remained there as collateral on the three notes.

Question. It simply took the place of the stock that was originally attached to the notes, as collateral security?

Answer. Yes, sir. The stock was so reissued as to qualify some of the old directors and some new directors, in such proportion that if one of the new directors went to the Travis company a meeting of the directors could be held, or if one of the old directors came to Elmira a meeting could be held here, and that same plan was pursued in all the companies.

Question. Now, what money or other consideration was paid by the parties to whom the stock in the Travis company was reissued on the dates you named?

Answer. There was not any.

Question. How many of the persons to whom the stock certificates in the Travis company was issued were officers or employees of the Thatcher Manufacturing Co.?

Answer. Mr. Baldwin, Mr. Niver, Mr. Collins, and myself. That would be four out of seven.

Question. And I believe you have stated that the stock when reissued was returned to the Guaranty Trust Co. and there held as collateral security on the notes until the notes were finally paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Now take up one other company and detail the history of its stock likewise.

Answer. The next is the Lockport Glass Co., which capital stock was reissued on December 6, 1919, one share to Mr. Baldwin, one share to myself, one share to Mr. Collins, one share to Mr. Niver, one share to Mr. Luce, one share to Mr. Lamb, one share to Mr. Keep, and 1,760 shares to myself, making a total of 1,767 shares.

Question. Did that include all the capital stock of the Lockport Glass Co.?

Answer. All the issued capital stock. I want to correct where I said Mr. Lamb, one share, to Mr. W. E. McComb, one share, instead of Mr. Lamb.

Question. Now, what disposition was made of that reissued stock?

Answer. It was indorsed in blank and returned to the Guaranty Trust Co., of New York, and there remained as collateral security on the three notes until the notes were finally paid.

Question. Now, how many of the persons to whom the stock in the Lockport Glass Co. was reissued, as you have just detailed, were officers, employees, or agents of the Thatcher Manufacturing Co.?

Answer. Four.

Question. Their names being——

Answer. Mr. Baldwin, Mr. Mandeville, Mr. Collins, and Mr. Niver.

Question. What money or other thing of value was paid for that stock when reissued, as you have just recounted?

Answer. None.

Examiner SHEPPARD. Mr. Mandeville, did you subsequently transfer your holding to Mr. Baldwin as you did in the other?

Answer. No, sir.

Mr. BRINDLEY. Now, take the Essex Glass Co.

Answer. The Essex Glass Co. was reissued on December 8, 1919, as follows: One share to Mr. F. E. Baldwin, one share to Mr. R. W. Niver, one share to Mr. F. L. Collins, one share to Mr. R. M. Lamb, one share to Mr. Charles M. Tigner, one share to Watson Pickard, and 994 shares to H. C. Mandeville.

Question. Now, what is the total of the shares of stock reissued as you have recounted?

Answer. One thousand shares.

Question. Did that include all of the stock of the Essex Glass Co.?

Answer. Yes, sir.

Question. What money or other thing of value was paid for the stock so reissued as you have recounted?

Answer. None.

Question. Now, who among those stockholders of the Essex Glass Co. which you have just named were officers, employees, or agents of the Thatcher Manufacturing Co.?

Answer. Mr. Baldwin, Mr. Niver, and Mr. F. L. Collins.

Question. Now, was the stock in the Essex company reissued so as to provide your officers or directors as you detailed in the case of the Travis Glass Co.?

Answer. Yes, sir.

Question. And that plan also was carried out in the case of the Lockport Glass Co.?

Answer. Yes sir, the same plan.

Question. So that you could have a meeting of the board of directors?

Answer. At either place.

Question. At Elmira, N. Y., or at the respective home offices of the companies?

Answer. Yes, sir.

Question. Now, there is one other company involved, I believe—the Woodbury Glass Co.

Answer. The Woodbury Glass Co. books are kept at the office of the Woodbury Glass Co., Winchester, Ind. Perhaps I can find that in my data here.

Question. Was the stock of the Woodbury Glass Co. sent to Elmira by the Guaranty Trust Co., as the stock in the other three companies, for a reissue?

Answer. Yes, sir, the same way.

Question. Tell us, if you can, how the certificates of stock in the Woodbury company were handled.

Answer. I think I can find that memoranda in a moment. I have it here. About the same time—I can not give you the exact date, but it was about the same time as the other transaction. On December 1, 1920, then, the stock of the Woodbury company was so transferred as to stand as follows: F. E. Baldwin, 1,996 shares; George H. Clark, one share; F. L. Collins, one share; L. M. Kimmel, one share; R. W. Niver, one share, making a total of 2,000 shares. I am making this answer in regard to the common stock because the preferred stock belonged to individual holders and was not concerned.

Question. The common stock of the Woodbury company is the only stock having voting powers?

Answer. Yes, sir, under certain conditions.

Question. Did that include all of the common stock of the Woodbury company that you have just recounted?

Answer. Yes, sir.

Question. And who, of the new stockholders to whom the stock in the Woodbury company was reissued, were officers, agents, or employees of the Thatcher Manufacturing Co.?

Answer. Mr. F. E. Baldwin, Mr. F. L. Collins, and Mr. R. W. Niver.

Question. And was stock so reissued in the Woodbury company as to enable you to hold meetings either at the office of the Thatcher Manufacturing Co. or the home office of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Now, what disposition was made of this stock in the Woodbury Glass Co. when reissued as you have just recounted?

Answer. It was indorsed in blank and returned to the Guaranty Trust Co., of New York, and held by it as collateral for the three notes until they are paid.

Question. Now, the three notes held by the Guaranty Trust Co., of New York, were the original three notes executed by Mr. Baldwin, Mr. Ford, and Mr. Libbey on August 28, 1919?

Answer. That is my recollection; I think so.

Question. And the stock in the four companies when reissued as you have recounted was returned to and held by the Guaranty Trust Co. as collateral security for the payment of those three notes?

Answer. Yes, sir.

Question. And as you say it was so held until the notes were finally paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. I believe that you were present with Mr. Baldwin when the three notes were finally paid on July 3, 1920.

Answer. Yes, sir; on July 3, 1920.

Question. When the notes were paid, what disposition was made of the notes held by the Guaranty Trust Co.?

Answer. Turned over to me as I recall it.

Question. And what did you do with them?

Answer. I brought them back to Elmira.

Question. Now, the three notes and the shares of stock in the four companies were, as you say, delivered to you at New York on July 3, 1920.

Answer. The stock, as I recall it, was delivered to me, but I think the notes were given to Mr. Baldwin.

Question. And you accompanied Mr. Baldwin on that trip when he was closing the matter?

Answer. Yes, sir.

Question. So that there was no money or other thing of value paid by any officer, employee, or agent of the Thatcher Manufacturing Co. for any part of the stock issued to them in the Travis Glass Co., Essex Glass Co., Lockport Glass Co., or the Woodbury Glass Co., was there?

Answer. There was not any stock issued to the Thatcher Manufacturing Co. in any of the companies.

Question. I did not mean to say that. Repeat my question.

(Question repeated.)

Answer. No, sir; I might say here that the different men that held this stock were designated and nominated by Mr. Baldwin.

Question. That explains how it happened to be issued?

Answer. How it happened to be issued to them.

Question. Who prepared the certificate of incorporation of the Sterling Glass Co.?

Answer. I did.

Question. Do you recall the original incorporators of that company?

Answer. Myself, Mr. Waxman of my office, Mr. Personius, and Mr. Rodgers.

Question. Who are Mr. Waxman, Mr. Personius, and Mr. Rodgers?

Answer. Mr. Waxman is a lawyer in our office, Mr. Personius is my partner in the law practice, and Mr. Rodgers is our bookkeeper.

Question. I believe you stated, Mr. Mandeville, you prepared the papers and documents in reference to the transfer of the assets and property of the Travis Glass Co., Essex Glass Co., and Lockport Glass Co. to the Thatcher Manufacturing Co.?

Answer. Yes, sir; I drew the deeds and bills of sale for each one and the resolutions authorizing it.

Question. And did you also prepare the documents in reference to the dissolution of those companies?

Answer. That was done under my direction in my office.

Question. You were aware of the fact that it was being done and saw that it was done properly?

Answer. I was responsible for it.

Question. And the deeds from the various companies to the Thatcher Manufacturing Co. were prepared the same way?

Answer. Yes, sir.

Question. Examine Exhibit P of the stipulation, please.

Answer. Yes, sir.

Question. Can you identify it?

Answer. Yes, sir.

Question. What is it?

Answer. It is a deed from the Sterling Glass Co. to the Thatcher Manufacturing Co. of all its assets.

Question. Exhibit P is a copy of the original deed?

Answer. Yes, sir.

Question. Now, is that instrument executed by the Sterling Glass Co. in conveying all its property, assets, etc., to the Thatcher Manufacturing Co?.

Answer. Yes, sir.

Question. Now, when the Sterling Glass Co. executed and delivered the instrument of which Exhibit P is a copy, did that dispose of all its assets and properties?

Answer. Yes, sir.

Examiner SHEPPARD. What was the consideration in that deed?

Answer. $1 and other good and valuable consideration.

Mr. BRINDLEY. Then what transpired in the Sterling Glass Co. after the deed, of which Exhibit P is a copy, was executed and delivered?

Answer. It was afterwards dissolved.

Question. Now, examine, please, Exhibit V of the stipulation.

Answer. Yes, sir.

Question. Will you tell us if you can identify it?

Answer. It is dated July 25, 1920. I have Exhibit V before me—or a copy of it, rather.

Question. And Exhibit V is a copy of what document?

Answer. It is a bill of sale from the Travis Glass Co. to the Thatcher Manufacturing Co.

Question. What is the date of that instrument?

Answer. July 25, 1920.

Question. Is that the instrument by which the Travis Glass Co. transferred its property, assets, etc., to the Thatcher Manufacturing Co.?

Answer. Its personal assets. I think there was a deed executed for the real estate.

Question. Separate from this?

Answer. I think so.

Examiner SHEPPARD. That was before the thing was paid?

Answer. They were executed and ready for delivery. They took effect on delivery.

Question. What became of the Travis Glass Co. subsequent to its transfer and assignment of its assets to the Thatcher Manufacturing Co.?

Anwer. It was dissolved.

Question. Now, examine, if you please, Exhibit Z-1 of the stipulation and tell us what it is, if you can identify it.

Answer. It is a transfer of the assets of the Essex Glass Co. to the Thatcher Manufacturing Co.

Question. You prepared that original as you did the other originals, also, I believe?

Answer. Yes, sir; this is dated June 17, 1920.

Question. And it was by the instrument of which Exhibit Z-1 to the stipulation is a copy that the Essex Glass Co. transferred the property mentioned therein to the Thatcher Manufacturing Co., was it?

Answer. Yes, sir.

Question. Do you recall whether or not there was any other written instrument transferring anything?

Answer. I think there was. I think there was a separate bill of sale for each one.

Question. What became of the Essex Glass Co. after the transfers of its property to the Thatcher Manufacturing Co.?

Answer. It was dissolved.

Question. Now, examine Exhibit Z–6 to the stipulation and tell us what that is, if you can identify it.

Answer. That is a transfer of the assets of the Lockport Glass Co. to the Thatcher Manufacturing Co., dated June 25, 1920.

Question. Did you prepare the original of which Exhibit Z–6 to the stipulation is a copy?

Answer. Yes, sir.

Question. Do you recall whether or not there was any other instrument conveying any property to the Thatcher Manufacturing Co.?

Answer. Yes; I think there was a deed accompanying—yes. Those deeds were all recorded in the proper clerk's offices in the counties where the real property was situated.

Question. Those deeds were simply to convey the real estate?

Answer. They were in the same terms, practically.

Question. And they were all executed by their respective companies to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And what became of the Lockport Glass Co. after the transfer of its property to the Thatcher Manufacturing Co.?

Answer. It was dissolved.

Question. So the three of the companies involved in the transaction of August 28, 1919, have been dissolved?

Answer. Yes, sir.

Question. And only the Woodbury Glass Co. is still in existence?

Answer. Yes, sir.

Question. Who owns the common stock of the Woodbury Glass Co. to-day?

Answer. Thatcher Manufacturing Co.

Question. How did it acquire that stock?

Answer. Through the transaction in the Guaranty Trust Co. on August 28, 1919, and the subsequent proceedings.

Question. As heretofore detailed by you and Mr. Baldwin?

Answer. Yes, sir.

Question. Do you know how much the Thatcher Manufacturing Co. gave for the common stock of the Woodbury Glass Co.?

Answer. I think I can tell you through that exhibit——

Examiner SHEPPARD. What was the number of shares?

Answer. Two thousand shares of the common stock of the Woodbury Glass Co. I can not tell you just exactly the amount, but I think it was about $500,000.

Mr. BRINDLEY. To what document are you referring now?

Answer. Exhibit G.

Examiner SHEPPARD. Refer to Exhibit H, Mr. Mandeville, and see if that refreshes your recollection to any extent in reference to the purchase of the Woodbury stock.

Answer. Oh, yes. The check for the Woodbury stock was $434,600 on that day. I think there was some more stock came in later.

Question. A small amount?

Answer. Yes.

Question. Not included in what Mr. Axton delivered to you on August 28?

Answer. Yes. I think that was referred to later in the letter.

Question. Can you now give the total amount there more definitely than you have just stated?

Answer. There was some more stock came in, but the money that was paid over that day was $434,600. The balance was there with Guaranty Trust Co. to take up more stock that was coming in with draft attached.

Question. That was a small amount of stock in the Woodbury Glass Co. which Mr. Axton didn't have in his possession or control on August 28, 1919?

Answer. Yes, sir.

Question. So, the Thatcher Manufacturing Co. paid for the stock in the Woodbury Glass Co. the sum of——

Answer. I can not tell you. About $500,000 I recall it. It was about $500,000. I do not remember the exact amount.

Examiner SHEPPARD. That is close enough.

Mr. BRINDLEY. I believe that is all.

Redirect examination:

Mr. SMITH. You said that Mr. Libbey, under the contract of August 28, 1919, had the right to withdraw not only on the ground of the failure of the Hartford-Fairmont people to come in but if the general set-up was unsatisfactory to him?

Answer. Yes, sir.

Question. Is it not true, however, that the failure of the Hartford-Fairmont plan was the main reason why he withdrew?

Answer. I think it must be because we never got to discussing the set-up of the company at all.

Question. That was what brought the thing to an issue with him, so far as you know?

Answer. Yes, sir.

Examiner SHEPPARD. That is with Mr. Libbey?

Answer. Yes, sir.

Mr. SMITH. And Mr. Libbey would control Mr. Ford?

Answer. Yes, sir.

Question. I am going to ask you a question, Mr. Mandeville, that I should have asked you on the direct. This is in regard to the stock book. Mr. Mandeville, I show you the stock book of the Travis Glass Co. Will you tell me the date of the first share issued?

Answer. August 11, 1908.

Question. Will you be good enough, now, to run through all the shares of stock and see if there are any shares which stood in the name of the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. So the Thatcher Manufacturing Co. was never of record a stockholder of the Travis Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Essex Glass Co. Will you tell me the date of the first share issued—No. 1 of that company?

Answer. February 20, 1913.

Question. Will you similarly go through that stock book and see if there was any share of stock ever issued to the Thatcher Manufacturing Co.?

Answer. No, sir; there were none.

Question. So the Thatcher Manufacturing Co. was never a stockholder of record of the Essex Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Lockport Glass Co. Will you tell me the date of the first share issued, No. 100?

Answer. May 16, 1919.

Question. Will you similarly go through that stock book and see if there was any share of stock ever issued to the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. There is no appearance of the Thatcher Manufacturing Co. on that record?

Answer. No, sir.

Question. And the Thatcher Manufacturing Co. was never a stockholder of record of the Lockport Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Sterling Glass Co. and will ask you to read therefrom the certificate numbers and in each case the number of shares in the said certificate, the date, and the party to whom issued. First give me the certificate number.

Answer. Certificate No. 1, two shares, dated August 23, 1919, to Hubert C. Mandeville. Certificate No. 2, two shares, dated August 23, 1919, to Leo Waxman. Certificate No. 3, two shares, dated August 23, 1919, Ely W. Personius. Certificate No. 4, two shares, dated August 23, 1919, William P. Rodgers. Certificate No. 5, 2,492 shares, dated August 27, 1919, to Thatcher Manufacturing Company. Certificate No. 6, 2,500 shares, dated August 27, 1919, on the face of the certificate, but 1920 on the stub——

Question. The 1920 is a mistake?

Answer. Yes. To Edward D. Libbey and on the bottom of the certificate——

Question. In this case will you read the note about the transfer?

Answer. No. 6 is this note: "Certificate No. 6 canceled June 5, 1920. Certificate No. 7 issued in its place June 5, 1920." Then there is certificate No. 7 for 2,500 shares dated June 4, 1920, to the Thatcher Manufacturing Co., and that is all.

Question. So that certificate No. 7 represents the transfer of the original 2,500 shares held by Mr. Libbey and later taken over by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. In regard to the mistake on the stub of stock certificate No. 6, where it is said to have been dated August 27, 1920, you said that that was a mistake. Do you know, as a matter of fact, that that was a mistake?

Answer. Yes. Because the original certificate is attached to it and the original certificate is dated 1919 and the stub should correspond with the certificate.

Question. Then you know, as a matter of fact, that that stock was originally issued to Mr. Libbey in 1919?

Answer. Yes, sir.

Question. When you spoke of the result of the transaction on August 28, 1919, as the acquisition of the stocks of the four companies, you didn't mention, did you, that it was an acquisition as record owner of these stocks, but as an equitable title to the stock?

Mr. BRINDLEY. We object to that question as it calls for his conclusion—a legal conclusion at that.

Examiner SHEPPARD. The question is allowed. You may proceed.

Answer. No, I did not consider it acquisition in the sense of the record ownership or anything more than is termed by the definition in the contract of August 28. That is a matter of argument.

Examiner SHEPPARD. Mr. Mandeville, just one question. When this Thatcher Manufacturing Co., through its bond issue, obtained the money to take up these notes and collateral held by the Guaranty Trust Co. and which you and Mr. Baldwin accomplished on July 3, 1920, the collateral and the notes were handed to you—delivered to you—by the bank, weren't they?

Answer. To Mr. Baldwin and myself: yes, sir.

Question. And the notes paid and the collateral paid which had been taken up by the Thatcher Manufacturing Co. through its money was the property of the respondent, wasn't it?

Answer. Yes, sir.

Question. Did the bank make any assignment at all to the Thatcher Manufacturing Co. of the collateral and notes?

Answer. No, sir.

Question. It did not?

Answer. No, sir.

Question. It just marked them paid?

Answer. It marked the notes paid and handed them over with the collateral. We receipted for it.

Mr. BRINDLEY. Mr. Mandeville, this stock book of the Sterling Glass Co. shows, as you have already recited, that certificate No. 7 for 2,500 shares of the capital stock was issued June 4, 1920, to the Thatcher Manufacturing Co., of Elmira, N. Y.?

Answer. Yes, sir.

Question. That certificate No. 7 to take the place of the stock issued soon after the acquisition of the Sterling Glass Co. to Mr. E. D. Libbey?

Answer. Yes, sir.

Question. And from and after June 4, 1920, the Thatcher Manufacturing Co. owned all the capital stock of the Sterling Glass Co. except the eight shares belonging to you, Mr. Waxman, Mr. Personius, and Mr. Rodgers?

Answer. Yes, sir; it really owned all of it.

Question. Going back for a moment to the transaction at the Guaranty Trust Co. in New York, when you and Mr. Baldwin paid the three notes held by the Guaranty Trust Co., did you have any meeting that day with the bond buyers?

Answer. With their attorneys.

Question. With their attorneys?

Answer. Yes, sir.

Question. Now, were they present during this transaction?

Answer. They went over with Mr. Baldwin and myself to the Guaranty Trust Co. and stayed until after the money was paid over and I do not remember whether they [*remained*] until we got our notes and collateral back or not.

Question. Where did you and Mr. Baldwin get the money that day with which you paid the Guaranty Trust Co.?

Answer. The money was turned over by the bankers to their attorney.

Question. Who were the bankers?

Answer. Hemphill, Noyes & Co. and Bonbright & Co.

Question. They were the bond buyers?

Answer. Yes, sir.

Question. They were the persons who made the contract with Mr. Baldwin in reference to the bond issue?

Answer. Yes, sir.

Question. And they took the bond issue?

Answer. Yes, sir.

Question. The proceeds of that bond issue were turned over to you and Mr. Baldwin at the Guaranty Trust Co. that day?

Answer. Yes, sir.

Question. And from it you paid——

Answer. We deposited it with Guaranty Trust Co. and drew a check——

Question. The check you drew on that fund was the check mentioned heretofore by Mr. Baldwin dated July 3, 1920?

Answer. It is here now.

Question. The fact of the matter is that the transaction between you and Mr. Baldwin, one representing the Thatcher Manufacturing Co. and the bond buyers, was practically simultaneous with the transaction of paying the notes with the Guaranty Trust Co.?

Answer. Yes. In fact, we delivered the mortgage then.

Question. It was done around the same table?

Answer. Yes, sir.

Question. And that closed the transaction which was instituted or begun on August 28, 1919, so far as the Guaranty Trust Co. was concerned?

Answer. Well, that transaction was not instituted then; it was the sequel to that.

Question. You say the payment by you and Mr. Baldwin to the Guaranty Trust Co. closed the transaction instituted with the Guaranty Trust Co. on August 28, 1919, when the three notes were made and the money originally borrowed?

Answer. Yes, yes.

FRANCIS E. BALDWIN, having previously been sworn, was thereupon recalled and testified on behalf of the respondent as follows:

Redirect examination:

Mr. SMITH. Can you give me, Mr. Baldwin, the Thatcher Manufacturing Co.'s production, in figures, for the year 1921 and for the first six months of 1922?

Answer. For the year 1921 we manufactured 821,750 gross. For the first six months of 1922, 384,199 gross.

Mr. SMITH. That will be all, Mr. Baldwin.

COMMISSION'S TESTIMONY.

FRANK L. COLLINS was thereupon called and duly sworn, and testified on behalf of the commission as follows:

Direct examination:

Mr. BRINDLEY. Please state your name, residence, and occupation?

Answer. Frank L. Collins, Elmira, N. Y. With the Thatcher Manufacturing Co.

Question. What is your official connection with the Thatcher Manufacturing Co.?

Answer. I haven't any position; I am just employed by them.

Examiner SHEPPARD. As what?

Answer. I have charge of the office.

Mr. BRINDLEY. You are familiar with the books and records and papers and documents of the Thatcher Manufacturing Co., are you?

Answer. Yes, sir.

Question. They fall under your immediate supervision?

Answer. Yes, sir.

Question. Mr. Collins, there is in evidence in this proceeding a document attached to the stipulation marked "Exhibit K," and it is admitted that that is a true copy of the annual report to the directors and stockholders of the Thatcher Manufacturing Co. made by Francis E. Baldwin, the president of the Thatcher Manufacturing Co., and it is dated February 18, 1920. Now, in it I find an expression which I wish you to explain. It is this: "At the time of the report we had advanced to the Travis Glass Co., the Woodbury Glass Co., and the Sterling Glass Co., $103,249.60. We received from the Essex Glass Co., $75,000, leaving a balance of $28,249.60. We made a further advance January 2 of $100,000 to the Sterling Glass Co." Can you explain to me those figures and that statement from the report?

Answer. The $103,249.60 represented advances to the Travis Glass Co. of $25,000 and to the Woodbury Glass Co. of $40,625 and to the Sterling Glass Co. $37,827.17 less $182.57. That $37,827.17 was made up of miscellaneous expenses, in traveling expense and things of that kind that came up in connection with this work, and the $182.57 credit is from amounts returned by different ones—the moneys left from their traveling expenses. Now, that $182.57 taken out gave you the $103,249.60, the amount mentioned in the report.

Question. What were the dates when the money aggregating $103,249.60 was advanced by the Thatcher Manufacturing Co.?

Answer. Well, to the Sterling Glass Co., the first advance, or the first charge, is August 27, 1919, and that represents charges to that company up to and including December 31, 1919. That was advanced as expenses for the Sterling Glass Co. To the Travis Glass Co., that represents a cash advance on October 27, 1919, of $25,000. To the Woodbury Glass Co., advances during the month of September, 1919, of $40,605.

Question. This statement in the annual report of Mr. Baldwin's says: "We received from the Essex Glass Co. $75,000, leaving a balance of $28,249.60." Can you explain that $75,000 proposition received from the Essex Glass Co.?

Answer. We had the Essex Glass Co.'s check for $75,000 on December 31, 1919.

Question. That is the item referred to in this report?

Answer. Yes, sir.

Question. What became of that $75,000?

Answer. It was credited to the Essex Glass Co.

Question. What did Thatcher Manufacturing Co. do with it?

Answer. Deposited to their account.

Question. And became a part of the Thatcher funds?

Answer. And became part of the Thatcher funds advanced by the Essex.

Question. I presume you mean received from the Essex?

Answer. Received from the Essex.

Question. In other words, it was simply $75,000 received from the Essex Glass Co. and delivered to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And became part of the funds and assets of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. What was the date that was received, that $75,000?

Answer. December 31.

Question. Now, in his report dated February 18, 1920, Mr. Baldwin says: "We invested from our earnings $150,000 in the stock of the Sterling Glass Co. and have a note outstanding for $100,000 for the balance of our investment of $250,000 in that company." Can you explain that statement?

Answer. We borrowed $100,000 and took credit for it and drew our check for the $250,000.

Question. As a matter of fact, you actually paid the Sterling Glass Co. $250,000?

Answer. Yes, sir.

Question. $150,000 of that you had in cash and you borrowed the other $100,000?

Answer. That is all there is to it; yes, sir.

Question. Have you certain canceled checks of the Thatcher Manufacturing Co. there?

Answer. Yes, sir.

Question. Just describe them so that the reporter can take them in his notes.

Answer. Check dated August 23, 1919, to the Sterling Glass Co., $250,000, issued by Thatcher Manufacturing Co.

Question. Is that a canceled check?

Answer. Yes, sir.

Question. And what does it represent?

Answer. That represents the $250,000 for the purchase of the Sterling Glass Co.'s stock. Check dated June 7, 1920, on the second National Bank, of Elmira, for $261,750, drawn by Thatcher Manufacturing Co. to take up the Libbey stock of the Sterling Glass Co. of $250,000 and interest to that date of $11,750.

Question. The total sum then paid Mr. Libbey being——

Answer. $261,750.

Question. That was for the purchase of his stock in the Sterling Glass Co.?

Answer. Yes, sir.

Question. And included the interest, as you have detailed?

Answer. Yes, sir.

Question. Now, what other canceled checks have you there with you?

Answer. Check dated July 3, 1920, payable to the order of the Guaranty Trust Co., drawn on the Guaranty Trust Co., by Thatcher Manufacturing Co. for $1,634,955.

Question. What does that check represent?

Answer. That check was used to take up the charge to the Thatcher account by the Guaranty Trust Co. under date of July 3, for the same amount and was to cover, according to our records, the payment of the notes made by Baldwin, Ford, and Libbey.

Mr. Brindley. Mr. Collins, in Exhibit S to the stipulation in evidence in this cause, I see a notice addressed to the Travis Glass Co. and the board of directors thereof, which recites that the parties whose names are signed thereto have acquired all the shares of the capital stock of the Travis Glass Co., and among the names signed to that document I see the name of F. L. Collins. Is that F. L. Collins yourself?

Answer. Yes, sir.

Question. Did you ever own any stock in the Travis Glass Co.?

Answer. I had stock in my name.

Question. What did you pay for it?

Answer. Not anything.

Question. I see that in Exhibit X to the stipulation it recites that your are a stockholder of the Essex Glass Co., and your name is signed to that notice. How did you acquire stock in the Essex Glass Co.?

Answer. In the same way as in the Travis.

Question. You didn't pay anything for it?

Answer. I did not pay anything for it.

Question. And in Exhibit Z–3 to the stipulation in a notice addressed to the Lockport Glass Co. I see it is recited that you are a stockholder in the Lockport Glass Co., your name being signed to that notice. Did you own any stock in that company?

Answer. In the same way that I did in the other two. I did not pay anything for it.

Mr. Brindley. That is all, Mr. Collins.

Examiner Sheppard. None of the stock was ever delivered to you, was it?

Answer. Only for signing in blank.

Question. I mean that stock that you are purported to have owned?

Answer. No, sir.

Question. Mr. Collins, you have been with the Thatcher Manufacturing Co. for a number of years, haven't you?

Answer. Yes, sir.

Question. And you are familiar with all their business, more or less, in detail, are you not?

Answer. To a large extent, yes.

Question. You have testified that the Thatcher Manufacturing Co. made certain advances in cash to the Travis Glass Co. and the Woodbury Glass Co., the first on October 27, 1919, and the second in September, 1919. Was it your understanding at that time that either of these companies was owned or operated by the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. Was that indebtedness evidenced by note in favor of the Thatcher Manufacturing Co.?

Answer. No, sir; it was not.

Question. In what way were these advances made?

Answer. They were made as loans and carried on our accounts on an open charge against these companies.

Question. In other words, you sent the checks to these companies?

Answer. We sent the checks to them.

Question. Payable to the companies, respectively.

Answer. Payable to the companies; yes, sir.

Question. Were the same set of circumstances relative to the advance made to the Sterling Glass Co. on August 27, 1919?

Answer. To the Sterling Glass Co. That was for miscellaneous expenses that came in that we paid for the Sterling—that is, charges on the Sterling running from August 27, 1919, up to January 1, 1920.

Question. Now, you have testified that the Thatcher Manufacturing Co. received from the Essex Glass Co. on December 31, 1919, an amount of $75,000. For what purpose was that?

Answer. It was an advance in funds from the Essex to us.

Question. It was to take up any note or evidence of credit?

Answer. No. There is a law in the State of Ohio on bank balances on January 1.

Question. I would like to have you explain how the transfer by the Essex company—this Essex Glass Co., to the Thatcher Manufacturing Co.—could affect any bank balance in the State of Ohio?

Answer. It reduced the Essex balance in the State there.

Question. Therefore, this payment by the Essex company to the Thatcher company was not to take up any indebtedness?

Answer. No; it was not to take up any indebtedness.

Examiner SHEPPARD. That is all.

Examiner SHEPPARD. Gentlemen, I am open to suggestions as to future proceedings in this case.

Mr. SMITH. We rest, Mr. Examiner, unless it is desired to take further testimony.

Mr. BRINDLEY. It is hereby stipulated and agreed by the attorney for the Federal Trade Commission and the attorney for the respondent before the examiner of the Federal Trade Commission in this proceeding that the following statement of facts is true and may be taken and considered by the Federal Trade Commission in this proceeding in lieu of testimony, viz:

That the allegations in paragraph 3 of the amended complaint issued in this proceeding on July 18, 1922, are true as alleged in said paragraph 3.

That the allegations of paragraph 4 of said amended complaint are true as alleged in said paragraph 4 of said amended compliant, except that the Thatcher Manufacturing Co. does not now own the

exclusive right to all improvements that may be made on the Owens bottle-blowing machine and to any new machines that the Owens Bottle Co. may own or acquire, said right to said improvements and said new machines having terminated October 1, 1920.

Examiner SHEPPARD. We will adjourn further hearing in this cause until the call of the examiner.

Now, to wit, 4 o'clock p. m., same day, hearing adjourned until the further call of the examiner.

ORDER APPOINTING SUBSTITUTE EXAMINER.

(Dated October 25, 1922.)

UNITED STATES OF AMERICA.

Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 25th day of October, A. D. 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, commissioners.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order appointing substitute examiner.

Whereas William W. Sheppard, an examiner of this commission, was heretofore, to wit, on August 14, 1922, duly appointed and designated to receive and hear testimony and take evidence in the above-entitled proceeding; and

Whereas said William W. Sheppard is unable, by reason of another assignment, to sit further as an examiner in this case.

It is therefore hereby ordered that Edward M. Averill, an examiner of this commission, be, and he is hereby, designated an appointed to receive and hear testimony and take evidence in said proceeding.

By direction of the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738.

NEW YORK, N. Y.,
November 3, 1922—10 o'clock, a. m.

Met pursuant to notice.

Before E. M. Averill, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq., Hartford, Conn., for the respondent.

Mr. BRINDLEY. Before proceeding with the examination of a witness, I want to add to the record a direct statement in reference to an

agreement made at the hearing at Elmira. Mr. Smith, by referring to pages 173 and 174 of the transcript of the testimony taken at Elmira, N. Y., on August 14 and 15, 1922, you will observe a statement made by me in reference to an agreement in which it is recited that it is agreed that the allegations in paragraphs 3 and 4 of the amended complaint are true, with the exception noted on page 174. That agreement was made before the examiner by the attorney and assented to by the attorney for the respondent, but that assent does not appear in the record.

Mr. SMITH. I assent and concur in that stipulation.

Mr. BRINDLEY. That stipulation was made for the purpose of avoiding the necessity of taking testimony to prove the allegations of paragraphs 3 and 4 of the amended complaint, and is admitted, as stated, with the exception noted on page 174.

I. T. AXTON was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination by Mr. BRINDLEY:

Question. Please state your name, residence, and occupation.

Answer. I. T. Axton, Louisville, Ky., adviser to corporations.

Question. How long have you resided at Louisville, Ky?

Answer. About 20 years.

Question. Were you residing at Louisville during the years 1918 and 1919?

Answer. I was.

Question. In what business were you then engaged?

Answer. Bottle jobbing business and also stockholder in Woodbury Glass Co. part of that time.

Question. When did you first become interested in the Woodbury Glass Co.?

Answer. Either the latter part of 1918 or the early part of 1919.

Question. Where was the Woodbury Glass Co. located and doing business?

Answer. Winchester, Ind.

Question. And was it a corporation?

Answer. It was.

Question. To what extent did you first become interested in the Woodbury Glass Co.?

Answer. I bought $60,000 worth of the common stock.

Question. What was the amount of the common stock of the Woodbury Glass Co.?

Answer. $200,000.

Question. Did you subsequently acquire any additional stock?

Answer. Yes, sir.

Question. What part of the stock did you subsequently acquire?

Answer. My total holdings amounted to about 852 shares, par value $100.

Question. What was the total capital stock of the Woodbury Glass Co. at that time?

Answer. $200,000 common, and I think the authorized preferred was $300,000, but I can not just state how much had been issued. I think it was about $222,000.

Question. Of the preferred?

Answer. Yes.

Question. When were you first elected president of the Woodbury Glass Co.?

Answer. In the early part of 1919.

Answer. And how long did you continue in that capacity?

Answer. Until August 29, 1919.

Question. During the time that you were president of the Woodbury Glass Co., what, if any, offers or negotiations did you make for extending that company's business or consolidating or merging it with some other concern?

Answer. You refer to the merging or just to the general conduct of the business towards extending the business?

Question. Not necessarily the conduct of that particular business, but what efforts, if any, were made in reference to a merger with other concerns?

Answer. I procured options on the common stock of various concerns and tried to form a merger of these with the Woodbury and finance here in New York, but it was unsuccessful.

Question. Do you recall about what time you began that effort?

Answer. In May of 1919.

Question. And in furtherance of that effort, what did you secure?

Answer. I secured options on the stock of the various companies.

Question. What companies?

Answer. The Essex Glass Co., Lockport Glass Co., Travis Glass Co., and the rights of the J. T. & A. Hamilton on the machine of the Hartford-Fairmont Co. to make milk bottles.

Question. So that in May, 1919, you were president and the majority stockholders of the Woodbury Glass Co.?

Answer. No; I was not majority stockholder.

Question. You were then president of the Woodbury Glass Co.?

Answer. Yes.

Question. And had acquired options on the common stock of the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and an option on certain rights and privileges of business of the Hamilton Co.?

Answer. We secured the option on that machine and all that went with it, the rights of Hamilton's machine.

Question. And the option on the stock of the other companies named?

Answer. Yes, sir.

Question. And in securing those options, what did you do?

Answer. I tried to form the merger and have it financed.

Question. What was the result of your effort?

Answer. I wasn't able to do so because the various stockholders would not agree to certain modifications in the options which the bankers thought necessary.

Question. And so you ascertained that you would not be able to carry through the merger of the companies as you contemplated?

Answer. I was afraid I would not.

Question. When did you reach that conclusion?

Answer. I think it was in July, 1919.

Question. Then what did you do in reference to the stock of the companies which you controlled?

Answer. I went to Mr. F. E. Baldwin, president of the Thatcher Manufacturing Co., and suggested that the Thatcher or he or his associates exercise those options.

Question. What did you disclose to Mr. Baldwin that you held?

Answer. I showed him the options I had.

Question. On what?

Answer. On those various companies, on the stock of these various companies.

Question. What was the result of your interview with Mr. Baldwin?

Answer. At first he did not seem to be interested, but later he told me he was, and got the money together and the stock was sold.

Question. What stock was sold?

Answer. Of the various companies that I had options on, also the common stock of the Woodbury Glass Co.

Question. Where was that transaction in reference to the sale of stock consummated?

Answer. Guarantee Trust Co., New York.

Question. Do you recall the date?

Answer. August 29, 1919.

Question. What was the transaction which took place in the office of the Guarantee Trust Co. of New York City, on the date you mention?

Answer. The stock of the various companies was turned over to the representatives of the Guarantee Trust Co., who issued checks for the amount specified in my options.

Question. In other words, the stock in the various companies you have named was there delivered and the money in payment therefor paid to the respective owners or holders of the stock?

Answer. Or representatives; yes, sir.

Question. How long do you say you were connected with the Woodbury Glass Company?

Answer. As a stockholder I would say about a year. I want to make a statement back there where you asked me when I was president and I said the early part of 1919. It might have been the latter part of 1918.

Question. In what business was the Woodbury Glass Co. engaged?

Answer. They were manufacturing bottles, jars, and so forth.

Question. How many plants or factories did it own?

Answer. One.

Question. Where was it located?

Answer. Winchester, Ind.

Question. And what business was it engaged in in addition to manufacturing bottles and jars?

Answer. We made some boxes. We had a box plant in connection with the bottle factory.

Question. What disposition was made of the glass bottles and jars which the Woodbury company manufactured?

Answer. They were sold.

Question. How?

Answer. Through sales representatives, and officers of the company sometimes sold them, too.

Question. Where were your customers generally located?

Answer. The whisky customers, mostly in Kentucky. Then we had trade with packing houses in Chicago and other points.

Question. In what different States did the Woodbury Glass Co. sell its product?

Answer. Principally in the Middle West.

Question. Will you name some of the States?

Answer. Illinois, Indiana, Kentucky, Ohio.

Question. So the Woodbury Glass Co. manufactured glass bottles in Indiana and glass jars in Indiana?

Answer. Yes, sir.

Question. And shipped them into various other States?

Answer. Yes, sir.

Question. To purchasers located in various other States?

Answer. That is right.

Question. Was it in competition with any other concerns or persons engaged in a similar business?

Answer. Oh, yes.

Question. Can you name approximately the annual output of glass bottles or glassware manufactured by the Woodbury Glass Co. at the time you were its president?

Answer. You mean in dollars and cents?

Question. Yes; or in bulk output of bottles.

Answer. I would say about from a million and a half dollars to two million dollars annually.

Question. And what kind or class of glass bottles or glassware did that output include?

Answer. It included what was known as condiment ware, whisky bottles, and some milk bottles. At that time I do not know whether they were making whisky bottles or what. I think that was about at an end, but that used to be the big business of the Woodbury Glass Co.

Question. The manufacture of whisky bottles?

Answer. Whisky bottles and boxes.

Question. At the time you were connected with it, that class of business was somewhat on a decline, I believe.

Answer. Right up to the time when prohibition went into effect, and then it had a wonderful revival.

Question. After prohibition went into effect?

Answer. No; just before. We could not supply them fast enough, and afterwards too there was a bigger panic after prohibition went into effect than before—a bigger panic in the scarcity of whisky bottles.

Question. By what method did the Woodbury Glass Co. manufacture bottles?

Answer. Semiautomatic machines—Lynch machines.

Question. What is the name of the machine you just mentioned?

Answer. The Lynch. We had not got to making them on the Hartford-Fairmont when I sold my stock, but we were getting ready to.

Question. What connection, or relation, if any, did the Woodbury Glass Co. have to the Hartford-Fairmont Co.?

Answer. They had a contract for certain rights—a limited contract to manufacture condiment ware.

Question. On what?

Answer. On the Hartford-Fairmont feeders.

Question. What is the Hartford-Fairmont feeder?

Answer. There is a certain device for getting the glass out of the tank and into the molds.

Question. Is it a modern, successful, automatic machine for the manufacture of bottles?

Answer. It is a modern, automatic, successful feeder. We did not have any of their machines.

Question. But the Woodbury Glass Co. had a contract with the Hartford-Fairmont Co. for the use of certain machines for certain purposes?

Answer. Yes, sir.

Question. And what was the purpose for which the Woodbury company had the right to use the Hartford-Fairmont machine or feeder, which ever you call it?

Answer. You mean by that what class of bottles or jars?

Question. And the extent of its right? Just describe, so we can get it in the record.

Answer. We had a limited contract for the use of the Hartford-Fairmont feeders in the making of condiment ware, polished bottles. That was the big end of it. It might have covered something else.

Question. Have you a copy of that contract with you?

Answer. I have not; that was the property of the company.

Question. And remained with it?

Answer. Yes.

Question. After you severed your connection with the company?

Answer. Yes, sir.

Question. I believe you say that the Woodbury Glass Co. had not begun the use of the Hartford-Fairmont machine or feeder?

Answer. They were just getting ready to use it. They might have used it a little before it was sold or a little afterwards, but not in any great way.

Question. So during your connection with the Woodbury Glass Co. it manufactured glass bottles and glassware by processes different from the Hartford-Fairmont process?

Answer. That is right, with the exceptions I stated. We might have been making it the last month. I was not around the factory a great deal then.

Question. I believe you stated that the Woodbury Glass Co., in the manufacture of bottles and glassware, manufactured milk bottles also.

Answer. Yes, sir; in a limited way.

Question. What disposition was made of the milk bottles manufactured by the Woodbury Glass Co.?

Answer. They were sold to consumers and jobbers and the regular trade that buys milk bottles.

Question. In what section or territory?

Answer. The Middle West. About the same States as I have named before where Woodbury did its business.

Question. In States other than the State in which the milk bottles were manufactured?

Answer. And in the State where they were manufactured.

Question. What concerns other than the Woodbury Glass Co. sold milk bottles in the territory in which the Woodbury Glass Co. sold milk bottles?

Answer. I do not know.

Question. Do you know of any?

Answer. I presume that most of the leading factories where the freight did not prohibit sold in that territory.

Question. Can you name any glass bottle manufacturing concern which sold milk bottles in the territory occupied by the Woodbury Glass Co.?

Answer. Not to my personal knowledge. I would just infer, as I say, that most any of them, but I do not know.

Question. You stated, I believe, that you were present at the office of the Guaranty Trust Co. in New York City in August, 1919, when the stock in the Woodbury, Travis, Lockport, and Essex Glass companies was acquired by the purchasers on that occasion?

Answer. Yes, sir.

Question. Do you recall whether, during that sale or shortly preceding it, there was any discussion between you and the representatives of the Guaranty Trust Co. or of the Thatcher Manufacturing Co. in reference to the business in which the Woodbury Glass Co. was engaged?

Answer. There may have been as indicated by that letter.

Question. Examine document which I hand you and see if you can identify it [handing paper to witness].

Answer. I do, with the exception that this is dated August 28, 1921. The original was August 28, 1919. That error was made by my stenographer when she mas making a copy for you, when you were in Louisville, which was done the latter part of 1921, and she made the error of writing the current year instead of the year that was on the letter.

Question. Having examined the document which you hold in your hand, does it refresh your recollection to any extent as to its contents and authorship?

Answer. It does.

Question. What is the document you have just examined?

Answer. A letter to the Guaranty Trust Co. stating the nature of the Woodbury Glass Co.'s business and that of the Travis Glass Co.

Question. Is that document you hold in your hand the original letter?

Answer. Copy of the original.

Question. That letter was written by whom?

Answer. I. T. Axton.

Question. By yourself?

Answer. Yes, sir.

Question. Where was it written?

Answer. I think in the office of the Guaranty Trust Co., August 28, would be about the time.

Question. Of what year?

Answer. 1919.

Question. And is the document you hold in your hand a correct copy of the letter with the exception of the date?

Answer. I think it is.

Question. What should be the correct date of that copy?

Answer. August 28, 1919.

Question. And the copy you hold in your hand shows what date?

Answer. August 28, 1921: merely a typographical error on the part of my stenographer.

Question. Do you recall who was present when you dictated that letter?

Answer. I do not.

Question. Having examined the copy which you hold in your hand, do you recall whether or not you had any conversation with Mr. Baldwin or Mr. Mandeville in reference to the business of the Woodbury Glass Co., as stated in the letter written by you to the Guaranty Trust Co.?

Answer. I do not.

Question. Did you have any conversation prior to the date of that letter at Elmira or at any other place?

Answer. I do not recall it.

Question. When did you retire from the position of president of the Woodbury Glass Co.?

Answer. When I sold my stock.

Question. And that was?

Answer. August 29, 1919. I do not want to be too specific. It might have been August 28. We were there two days.

Question. It was either August 28 or August 29?

Answer. Yes, sir.

Question. Of 1919?

Answer. That is right.

Question. Who assumed or took over the management of the Woodbury Glass Co. after you retired?

Answer. The management remained about the same; the same management we had before.

Question. So far as the personnel is concerned, you mean?

Answer. Yes. But I understood the Thatcher Manufacturing Co. took over the management.

Question. After the sale of stock in the Woodbury Glass Co. in August, 1919, what effect, if any, was there on the competition then existing or theretofore existing between the Woodbury Glass Co. and the Travis Glass Co. or the Essex Glass Co. or the Lockport Glass Co.?

Answer. I do not know.

Question. Do you know in what sections of the United States the Travis Glass Co. and the Essex Glass Co. and the Lockport Glass Co. sold and disposed of their products?

Answer. No, sir; except by hearsay.

Question. So far as your own knowledge goes, then you do not know whether they were competing with the Woodbury Glass Co. or not?

Answer. I do not think they were competing with Woodbury; they might have been in some cases, but we were small factories in the milk bottle business.

Question. The extent of the competition, if any, was then unknown to you. Is that true?

Answer. Was then unknown to me? It is unknown to me now. I might have known then, being in the business, more than I can recall now.

Question. The letter written by you on August 28, 1919, to the Guaranty Trust Co. of New York, a copy of which you have just identified, was written by you in connection with the sale of stock in the Woodbury, Travis, Essex, and Lockport Glass Cos., was it not?

Answer. Yes, sir.

Question. And that was written at the time or shortly before the acquisition of the stock in the four companies was consummated?

Answer. Yes, sir.

Question. Is the document you hold in your hand a correct copy of the letter written by you on the date you have named?

Answer. I think it is.

Question. And the statements therein made by you were true, were they not?

Answer. Yes, sir; to the best of my knowledge and belief at that time.

Question. You at least thought they were true when you were writing the letter?

Answer. Absolutely.

Question. And you know of no reason why you should question the correctness of those statements, at this time, do you?

Answer. None whatever.

Mr. BRINDLEY. I will now offer in evidence the document identified by the witness, Mr. Axton, as a copy of the letter written by him on August 28, 1919, to the Guaranty Trust Co. of New York, and will call attention at this time to the fact that the copy now offered in evidence bears date of August 28, 1921, and that date has been explained by the witness.

Examiner AVERILL. Any objection, Mr. Smith?

Mr. SMITH. No.

Mr. BRINDLEY. I ask that it be received in evidence and marked as an exhibit to the testimony of Mr. I. T. Axton.

Examiner AVERILL. The document will be received and marked "Commission's Exhibit No. 2."

(The paper was received in evidence and marked "Commission's Exhibit No. 2.")

By Mr. BRINDLEY:

Question. Mr. Axton, the transaction in reference to the acquisition of the stock in the four companies was consummated, you say, at the office of the Guaranty Trust Co. of New York, in August, 1919?

Answer. That is correct.

Question. What did you do, if anything, with reference to assembling the owners or the representatives of the owners of the stock in the four companies at the office of the Guaranty Trust Co.?

Answer. I wired them to meet me in New York and I took them down there.

Question. An had them present at the office of the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Do you remember where you were assembled?

Answer. I think they called it the board room.

Question. And who was present in that board room?

Answer. The various owners or representatives of the owners of the common stock of these companies and representatives of the Guaranty Trust Co. and myself and Mr. George H. Clark.

Question. Was any representative of the Thatcher Manufacturing Co. present before the stock was transferred or delivered?

Answer. No, sir.

Question. How many persons among the stockholders or their representatives whom you had assembled knew to whom the stock was to be sold or transferred beside yourself.

Answer. I think there were two—Mr. George H. Clark and Mr. William Lucking.

Question. How about the remainder of the stockholders or representatives?

Answer. They did not know to a certainty but some of them talked very much like they knew. They seemed to know what was going on or had a very strong suspicion.

Question. As you had options on the stock, you simply requested them to meet you at that place for completing the transaction.

Answer. My option read two ways, one all cash, and one part cash, and securities. I fell down in not being able to modify the part cash and part securities. That gave me a right to buy for all cash, no matter who the purchaser was.

Question. And so far as you were concerned, you did nothing to disclose that you were not the actual purchaser of the stock. You were simply completing a deal?

Answer. Yes; and if we were paying a man all cash, it was not any of his business either who was going to buy.

Question. After that meeting of the stockholders——

Answer. May I say one thing about those who were present? It was not because Mr. Baldwin did not want to be; in fact, it was at my suggestion that he was not there.

Question. I do not mean to intimate that there is anything wrong in the failure to actually disclose the situation.

At that meeting, the consideration was paid or delivered to the respective stockholders?

Answer. Yes, sir.

Question. And the stock was indorsed in blank and delivered by the former owner of the stock?

Answer. Some of it had been indorsed before. It was brought there and some indorsed there.

Question. But the actual indorsement, the transfer and delivery was consummated that day?

Answer. Yes, sir.

Question. With whom were your negotiations carried on in reference to the sale of the stock under your options?

Answer. With Mr. Mandeville and Mr. Baldwin.

Question. And you knew at that time, with what manufacturing concern they were associated or connected?

Answer. Yes, sir.

Question. Do you recall whether there was any discussion between you and either Mr. Mandeville or Mr. Baldwin in reference to the sale or acquisition of the stock being a violation of the law?

Answer. Yes, sir; it was mentioned, but they thought it was not; that they were doing anything wrong.

Question. The question of whether or not the acquisition of the stock was a violation of law was really discussed?

Answer. Yes, sir; more between Mr. Mandeville and Mr. Baldwin. They were talking over as to whether or not it would be advisable for them to do it.

Question. But you say they concluded there was no violation?

Answer. That there was nothing wrong in what they were doing.

Question. And the sale or acquisition proceeded to a conclusion?

Answer. Yes, sir.

Question. After the stock in the four companies had been delivered in the office of the Guaranty Trust Co., did any representative of the Thatcher Manufacturing Co. appear before the meeting in which you and the other stockholders were assembled?

Answer. Yes, sir; Mr. Mandeville and Mr. Baldwin.

Question. That was immediately following the transfer of the stock?

Answer. Yes, sir.

Question. Do you recall what statements, if any, they made to you and the other former stockholders?

Answer. They said they wanted—Mr. Baldwin made a little talk to them and told them they wanted all of the former managers to remain in charge until they were further notified—a kind of a little get-together talk that is usually made at a time like that.

Question. And who made that talk?

Answer. Mr. Baldwin, I think. Mr. Mandeville made a little talk, too, but I do not remember what he said.

Question. Was any action taken that day in reference to resignations of the officers of the four companies named?

Answer. All of them resigned.

Question. What disposition was made of the resignations?

Answer. I do not know.

Question. Do you recall how they resigned? Or by what manner?

Answer. I resigned by just signing my resignation.

Question. Making a written resignation and signing it?

Answer. Yes. I presume all the others did, too. I know what I signed. I presume the others did, too.

Question. What disposition was made of the written resignation?

Answer. I do not know.

Question. Did you keep it or did you give it to somebody else?

Answer. I did not keep it, no.

Question. What did you do with it?

Answer. I do not know. A representative of the Guaranty Trust Co. went around.

Question. Do you remember whether you gave it to Mr. Baldwin or to Mr. Mandeville?

Answer. No; I do not know what they did with it.

May I make a statement without being asked about this matter?

Mr. BRINDLEY. I am perfectly willing.

Mr. SMITH. So am I.

The WITNESS. Mr. Baldwin and I differed on one very important matter, and I thought it was subject to rather severe criticism. He kept the price of bottles about 20 per cent, 15 to 20 per cent, under what other bottle manufacturers were getting at the same time.

I happened to be a small stockholder of Thatcher at that time and I did not see any need for that. I felt that he was so straight that he

leaned backwards a little bit, and his whole policy seemed to me wanting to play fair with the trade. I thought he had played a little bit too fair with them. I was perfectly willing for him to charge no more, but I thought it was a big mistake to charge less than he could have gotten and had a right to get.

Whisky and grape-juice bottles were selling at $11.50 to $12 a gross, and for a while there he was selling his quart milks at $10 and $10.50 a gross. There is more glass in a quart milk bottle than a quart grape-juice or whisky bottle.

His reason for that, as he explained it to me, was that he did not want anyone to think because he had acquired these plants, he was going to raise the price. But I figured that if he had just put the price up to the market price, of what the other people were getting, he would be treating the trade all right.

Mr. BRINDLEY. I believe that is all I have at this time.

Cross-examination by Mr. SMITH:

Question. Mr. Axton, this letter, Exhibit No. 2, is a little obscure. I will read the second paragraph:

"The Woodbury Glass Company has, in the past, manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the company gradually to discontinue all manufacturing thereof. There is, therefore, practically no competition between the two companies."

I have understood all along up to this time that the Woodbury Glass Co. on August 28, 1919, was not, as a matter of fact, making milk bottles at all, and I am quite a little surprised by the intimation here that it was. Are you sure, of your own knowledge, Mr. Axton, that they were making milk bottles on that date?

Answer. Only by that letter. When I wrote that letter, I was pretty confident that they were making them or just very recently before that time.

Question. You do not actually know of your own knowledge whether they were on that date making milk bottles?

Answer. No, sir.

Question. Did you come in contact with the actual manufacture and selling of the Woodbury company at that particular date?

Answer. No, sir; I was not in the selling end of it.

Question. I am inclined to think that you are mistaken on that fact. I want to get it correct, that is all.

Answer. Mr. Smith, I was more in the executive end of the business, trying to handle the finances and get the company on its feet that way. I spent very little time at Winchester. I still maintained my residence at Louisville and would run up there for hardly more than ever a day or two at a time; sometimes I would be away for months. So, some of these details I might have made an error in but that was my impression at the time I made it. Sometimes they might have gone a month without making any milk bottles. The milk-bottle business was a very small part of our business.

Question. Taking the most recent actual personal knowledge that you had of that manufacture of milk bottles prior to that date, how large was that manufacture per month or week or anything you like?

Answer. How large?

Question. Yes. How many gross did you make?

Answer. I could not state, of my own knowledge; but I heard George Clark say one time that we only made thirty or forty thousand gross of milk bottles a year.

Question. Do you know what time that was made?

Answer. It was recent enough before that for me to have in my mind that it was a very small part. My statement was made more from what he told me rather than an examination of the records themselves. He was our general manager.

Question. Do you know whether there was more than one furnace used on milk bottles?

Answer. I do not think there was one entire furnace.

Question. Certainly not more?

Answer. Oh, no. I am almost positive that there was not even half of one furnace.

Question. And these were made wholly by other processes than the Hartford Fairmont?

Answer. Yes, sir.

Question. What is known as the semiautomatic?

Answer. Semiautomatic, yes, sir.

Question. I suppose there were very numerous manufacturers who made small amounts of milk bottles by that process?

Answer. Quite a few of them, I am informed.

Question. Do you remember a certain sales contract that the Woodbury company had with Linton and Scott?

Answer. Yes, sir.

Question. Did that contract cover the entire product of Woodbury Glass Co.?

Answer. Yes, sir; with certain exceptions in whiskey bottles and any bottles that I might sell. I was a jobber on that market. Lucking, who was one of our stockholders, might want to purchase.

Question. Do you know whether that contract specified milk bottles?

Answer. I do not recall. Let me add this to my statement in connection with Exhibit No. 2. That statement was made not with a view to having any knowledge of just what had been made the month before or two months before, but probably the general business as it had been conducted since I came in and for some time before I came in in which they had been making milk bottles. They might not have been making any milk bottles for several months before that statement was made. That is about the general business, as I remembered it. We had the milk bottle molds and could have made milk bottles just like any other glass factory can. The processes for making milk bottles are available to any glass manufacturer in the country, as we made them or similar methods. Anybody could have got that kind of a machine that we had.

By Mr. BRINDLEY:

Question. And the manufacture of milk bottles made by the Woodbury Glass Co. during the time you were connected with it were not made on the Hartford Fairmont machine?

Answer. No, sir.

Question. But the other machines or facilities which the Woodbury Glass Co. possessed?

Answer. We felt that we were not really, we could hardly be called in the milk bottle business; the business was so small. Our big business, what we were striving for, was condiment ware, after the whisky bottle business went out.

By Mr. SMITH:

Question. And you had no license or right to use the Hartford Fairmont feeder?

Answer. Absolutely none for the manufacture of milks.

Question. During the four months preceding August 28, 1919, how frequently were you at the Woodbury factory?

Answer. I doubt if I was at the Woodbury factory more than two or three times.

Question. For how long a total time were you there?

Answer. I would say all told it would not exceed three or four days.

Question. I think you said, Mr. Axton, that you were not, at one particular time, at least, the holder of a majority stock of the Woodbury Glass Co. Were you ever a holder of the majority of that stock?

Answer. No, sir.

Mr. SMITH. That is all.

Redirect examination by Mr. BRIDLEY:

Question. Mr. Axton, a few moments ago, you mentioned the name of a Mr. Clark. Who was the Mr. Clark?

Answer. George H. Clark was vice president and general manager of the Woodbury Glass Co.

Question. He was associated with you in the ownership of the stock of the Woodbury Glass Co.?

Answer. He owned part of the stock; yes, sir.

Question. And the stock owned by Mr. Clark and other stockholders of the Woodbury Glass Co. was included in the options which you held on the stock of the four companies?

Answer. No, sir; I did not have any options of any stock of the Woodbury Glass Co. They trusted me enough and I trusted them to know that we would act together.

Question. And you did act together?

Answer. Yes, sir.

Question. And the entire common stock of the Woodbury company, you say, was acquired in New York City on the date mentioned by you in connection with the acquisition of the stock in the other companies?

Answer. Yes, sir; with the exception of one little lot that was sent on later. One of our minority stockholders did not know that we were going to sell out and did not know anything about it, and he got a wire from me to send his stock to the Guaranty Trust Co. with draft attached.

Question. And he did so?

Answer. Indeed he did.

Question. Is the Mr. Clark you mentioned living at this time?

Answer. He has been dead about two-and-one-half years.

Question. After the sale of the stock in the four companies and after your resignation as president of the Woodbury Glass Co., did you have any connection with the Thatcher Manufacturing Co. or the Woodbury Glass Co.?

Answer. I had an agreement to assist in financing the bond issue that came out later on, but that was with the Sterling Glass Co. That is the name that had been selected at that time, but I had no connection with the Woodbury Glass Co.

Question. And you continued in a limited way in assisting in financing or carrying through the deal?

Answer. Yes, sir.

Question. And your contract or agreement was with whom?

Answer. The Sterling Glass Co.

Question. Did your contract or agreement include any compensation to you for your services?

Answer. Yes, sir.

Question. And was that compensation paid to you?

Answer. Yes, sir.

Question. By whom was it paid?

Answer. The Thatcher Manufacturing Co.

Question. When did that agreement involving your services terminate?

Answer. About six months after I sold my stock.

Mr. BRINDLEY. I believe that is all.

Mr. SMITH. That is all.

(Whereupon at 12 o'clock, noon, a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

FRANCIS E. BALDWIN was thereupon recalled as a witness, and although he had been previously sworn, he was again sworn by the examiner, and testified as follows:

Direct examination by Mr. SMITH:

Question. What is your official position, again?

Answer. President of Thatcher Manufacturing Co.

Question. You heard the testimony of Mr. Axton this morning, and especially his letter introduced in evidence of August 28, 1919. Were you, on August 28, 1919, at all familiar with the business, manufacturing, and selling to the Woodbury Glass Co.?

Answer. To a certain extent: yes, sir.

Question. Naturally, because you had been concerned in this whole transaction?

Answer. Yes, sir, and I had been very intimately connected—Mr. Clark and I had been very intimate friends for several years.

Question. And, of course, your company had been making milk bottles and selling them for a great many years?

Answer. Yes, sir.

Question. So far as you know, on that date, was the Woodbury Glass Co. making milk bottles?

Answer. They were not, and had not been making them for several months.

Question. Would you probably have known it if they had been?

Answer. Yes, sir, I think I should.

Question. Your salesmen certainly would have met their competition?

Answer. Yes, sir; and then I also talked to Mr. Clark and he told me they had stopped making milk bottles, and had not been making them for several months.

Question. For several months before August, 1919?

Answer. Yes, sir; when we took over the matter, they had not contracts for milk bottles. None were there in stock; there wasn't any milk bottles in stock.

Question. As a matter of explanation, milk bottles are usually sold on long time contracts, are they not?

Answer. Generally, a contract for a year.

Question. And a concern that does any appreciable business in milk bottles will have those contracts outstanding?

Answer. Yes, sir.

Question. And you found none of those in the Woodbury business?

Answer. No, sir; the months of July and August are the months that the contracts are largely made. All these other companies had contracts which we completed—which they completed under us.

Question. I show you a book and ask you to tell me what it is [handing book to witness]?

Answer. It is the stock book of the Woodbury Glass Co.

Question. What dates does it cover from beginning to end?

Answer. The first date here is September 1, 1910. I think the last date is January 5, 1920.

Question. Will you look at that book for the entries from July 1, 1919, to the end, and tell me whether you find any record on that book of any holdings in that company by either the Sterling Glass Co. or the Thatcher Manufacturing Co.?

Answer (after looking through book). No, sir.

Question. There are none?

Answer. None.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. That is the Travis Glass Co. stock book.

Question. Will you look at that book, from July, 1919, to the end and tell me whether you find any evidence of holdings of stock in that company by the Sterling Glass Co.?

Answer (after looking through book). None transferred to the Sterling Glass Co.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. Lockport Glass Co. stock book.

Question. The same question, whether there appears in that book from July 1, 1919, to the end any holdings of stock by the Sterling Glass Co.?

Answer (after looking through book). No.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. The Essex Glass Co. stock book.

Question. The same question.

Answer. From the first of July?

Question. Yes, from the first of July, Sterling Glass Co.

Answer (after looking through book). No, sir. Mr. Smith, I might state, that as I remember it there was but one furnace at the Woodbury Glass Co. in operation.

Question. At what time?

Answer. In August, 1919. Afterwards we built two new furnaces and built four new lehrs. At the time in August, they had two feeders working on one furnace with Lynch machines.

Question. What were they making?

Answer. In August I think they were making some whisky and they were making condiment bottles and they stopped making whisky bottles.

Question. You know yourself, of course, as a matter of fact, that the license from the Hartford-Fairmont to use its feeders which the Woodbury Glass Co. had did not cover the right to make milk bottles?

Answer. Did not: no, sir.

Question. Because you know that company now has that license.

Answer. I have seen that license: we own it.

Question. Do you remember the date when the Hartford-Fairmont licenses of these four companies—the Travis, Essex, Woodbury, and Lockport—were assigned to your company, the Thatcher Co.?

Answer. I think it was in July, 1920.

Question. July: do you remember it?

Answer. I can not remember just the date. I know that it was after the arrangements made in regard to the issuing of the bonds.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. Mr. Baldwin, the Woodbury Glass Co. is still in existence, is it not?

Answer. Yes, sir.

Question. And who owns its common capital stock now?

Answer. Practically speaking, Thatcher Manufacturing Co. There are a few shares held by individuals on the board of directors.

Question. The stock of the Woodbury Glass Co. was included in the mortgage made by the Thatcher Manufacturing Co. to secure the bond issue of 1920?

Answer. I believe it was.

Question. With the exception of a few shares issued to individuals for the purpose of qualifying directors and officers, all the stock of the Woodbury Glass Co. is now owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Examine a book I hand you and see if you can identify it. What is it?

Answer. It is the stock book of the Woodbury Glass Co., the common stock.

Question. Is it the one which shows the present record condition of the stock in the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Can you refer to that book and tell what the outstanding stock of the Woodbury Glass Co. amounts to, and by whom it is held?

Answer. Yes, sir. F. E. Baldwin has 1 share standing in his name; George H. Clark has 1 share standing in his name. He is dead and I do not know what has become of that. F. L. Collins has one share standing in his name; L. M. Kimmel has one share standing in his name; R. W. Niver has one share standing in his name; F. E. Baldwin has 1,995 shares, or really 1,996 shares. I have included the first share.

Question. The acquisition of the stock of the Travis, Essex, Lockport, and Woodbury Glass Cos. was acquired from Mr. Axton and his associates in the month of August, 1919?

Answer. Yes, sir.

Question. And the stock then acquired in all the companies was attached to notes given by you and your associates to the Guaranty Trust Co. of New York?

Answer. It was left with them as collateral security.

Question. Subsequently the certificates of stock which were attached to the notes as collateral security were canceled and a like amount of stock issued to other parties?

Answer. Yes, sir.

Question. And the reissue of stock was delivered to the Guaranty Trust Co. as collateral security for the notes held by it?

Answer. Yes, sir. I do not think they were formally attached to the notes; they simply held them as collateral.

Question. The cancellation of the old stock and the reissue of the new stock occurred in December, 1919, as shown by this record?

Answer. By that record it so appears, and I assume it to be correct.

Question. One share of the stock in the Woodbury Glass Co. on December 8, 1919, was issued to you?

Answer. Yes, sir.

Question. And on the same date one share of the stock was issued to George H. Clark?

Answer. Yes, sir.

Question. And one share of stock to F. L. Collins?

Answer. Yes, sir.

Question. And one share of stock to L. M. Kimmel?

Answer. Yes, sir.

Question. And one share of stock to R. W. Niver?

Answer. Yes, sir.

Question. And a certificate for 1,995 shares was issued to H. C. Mandeville?

Answer. Yes, sir.

Question. All of that appears on the stock book?

Answer. Yes, sir.

Question. Subsequently, the 1,995 shares issued to Mr. Mandeville were canceled and another certificate issued for that amount of stock in your name?

Answer. Yes, sir. And that was done on January 5, 1920?

Answer. It so appears there.

Question. And from this record, that is the last entry in the stock book?

Answer. Yes, sir.

Question. So, as a matter of fact, 1,996 shares of the stock of the Woodbury Glass Co. stand in your name?

Answer. Yes, sir.

Question. But, as you say, that stock is really owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. It is also true that it owns the other stock in the name of the other individuals, does it not?

Answer. No, sir.

Question. These one shares?

Answer. Oh, yes; I thought you meant the other companies.

Question. It was simply issued to the individuals named for the purpose of qualifying officers and officials?

Answer. And board of directors.

Question. When did you first visit the Woodbury Glass Co.'s plant?

Answer. I could not tell you. But some time after we purchased it and we were rebuilding the furnaces. I think I had been there prior to that time to see Mr. Clark, but no thought at that time of ever being interested in the plant.

Question. You had seen the Woodbury Glass Co.'s plant prior to the acquisition of that stock?

Answer. I think I had; yes, sir.

Question. But not, as you say, with any thought of ever acquiring the stock or the property itself?

Answer. That is right.

Question. And at the time of the acquisition in 1919, you had paid no visit to the Woodbury Glass Co.'s plant for the purpose of investigating it, had you?

Answer. No, sir; I had not.

Question. You did visit it shortly after the acquisition of the stock in 1919?

Answer. Just how shortly after, I do not remember, but not a very great while after; a few months.

Question. And you had not visited it for a few months preceding the stock acquisition?

Answer. No, sir. I had Mr. Niver, our general superintendent, visit the plants and pass upon them. His judgment is better than mine.

Question. So, as a matter of fact, you know nothing of your own knowledge regarding the output or production of the Woodbury Glass Co. at the time of the stock acquisitions in 1919?

Answer. Only their contract and what Mr. Clark told me.

Question. When you visited the plants shortly after the acquisition of the stock, the Woodbury Glass Co. was engaged in manufacturing bottles, was it not?

Answer. Yes, sir.

Question. And by what process or machines?

Answer. With the Hartford-Fairmont feeder and the Lynch machines.

Question. The Lynch machine is different from the Hartford-Fairmont feeder?

Answer. It is a machine that forms the bottles. The feeder is simply to get the metal into the mold.

Question. At the time you visited the Woodbury plant, it was equipped so that it could manufacture milk bottles, was it not?

Answer. No; I do not think they were in shape so that they could have manufactured milk bottles. I do not think their machines could have made a good milk bottle.

Question. Did you see the appliance which could have made the mold?

Answer. I did.

Question. The Woodbury Glass Co. could have manufactured milk bottles on its machinery facilities, could it not?

Answer. Not with the Hartford-Fairmont feeder, and that is the only thing they had in shape to get metal into their molds at that time.

Question. At the time you made your visit?

Answer. Yes, sir; at the time we bought them out.

Question. Do you know how long the Hartford-Fairmont feeder had been in operation at the Woodbury plant?

Answer. I think it had been in operation three or four months.

Question. In your first examination, some testimony was given in reference to a bond issue by the Thatcher Manufacturing Co. in the year 1920, I believe.

Answer. Yes, sir.

Question. You recall that bond issue?

Answer. I certainly do.

Question. Feelingly, I believe you said on your first examination?

Answer. Quite feelingly.

Question. That bond issue was secured by a mortgage giver by the Thatcher Manufacturing Co., I believe.

Answer. Yes, sir.

Question. And that mortgage included, as you stated a moment ago, the stock of the Woodbury Glass Co. as well as the property owned by the Thatcher Manufacturing Co.?

Answer. Yes; I am very sure that the stock was put in there, although I do not remember; I did not commit that mortgage to memory, but I am very sure it was included. In fact, they intended to cover everything that we had and some besides. I am very sure they got it in. The mortgage itself would show, of course.

Question. What became of the mortgage during the bond issue or what became of the bond issue itself?

Answer. The bond issue has been called and the bonds have not all been turned in yet. I am saying that because I am getting letters every few days in regard to it.

Question. In other words, the Thatcher Manufacturing Co. is retiring or calling that bond issue?

Answer. It has recalled and deposited the money in the Guaranty Trust Co. to buy all the bonds.

Question. As it had a right to do under the terms of the bond issue itself?

Answer. Yes, sir.

Question. So, as a matter of fact, the Thatcher Manufacturing Co. has paid and discharged the bonds?

Answer. Yes, sir; so far as the company is concerned, and I think Mr. Mandeville told me that the mortgage had been discharged.

Question. And the Thatcher Manufacturing Co. now owns all of this property free from the terms of the bond issue or the mortgage?

Answer. Yes, sir; so I understand.

Question. And that was paid by the Thatcher Manufacturing Co. itself?

Answer. Yes, sir.

Question. Where did the Thatcher Manufacturing Co. secure the funds with which to cover the bonds?

Answer. The bonds had the option of being converted into preferred stock or common stock. A certain amount was converted into prefered stock and a few into common stock, and we made arrangements to borrow on our notes, series A to run one year, and series B to run two years, from August 1, last, for a million dollars.

Question. And so, under that arrangement, you have discharged the bond issue?

Answer. Yes, sir.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. As a business man, it was your habit to know considerable about the production and sales of your competitors?

Answer. Yes, sir.

Question. Your salesmen, I presume, reported competition?

Answer. Not only that, but there was what is called the Milk Bottle Manufacturers Exchange in which each member of that Exchange recorded their contracts and their orders, and the cost of maintaining the exchange was figured up from the invoices which were sent to the exchange at a pro-rata share.

Question. Was your company advised through that exchange of the production of milk bottles by other people?

Answer. The reports were sent to us and we knew. A daily report was sent out.

Question. Based on those various facts, did you have any information whatsoever, up to August 28, 1919, that for the preceding six months, we will say, Woodbury Glass Co. was making milk bottles?

Answer. I would not say that it went back as far as six months, but I am very sure that as far back as three months they were not making or taking orders for or selling milk bottles.

Question. So that at the time of the acquisition of the stock in 1919, so far as you knew, the Woodbury company was not your competitors?

Answer. They were not.

Question. I presume that the records of the Woodbury company, selling and manufacturing contracts, would show that situation?

Answer. Yes, sir.

Question. You have those records?

Answer. I think we must have them; I presume so. Mr. Collins can find anything, I think.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. Mr. Baldwin, as I remember, in your former examination at Elmira, you testified that the Thatcher Manufacturing Co. sold milk bottles in practically all the States of the United States?

Answer. Practically all. We endeavor so to do.

Question. You pretty well cover the country?

Answer. Very well indeed.

Question. As a matter of fact, at the time of the stock acquisition in 1919, the Thatcher Manufacturing Co. was selling milk bottles in the Middle Western States, was it not?

Answer. In every one of them?

Question. And included in that were the States of Indiana, Kentucky, and Ohio?

Answer. Yes, sir, and Illinois.

Question. And I believe you also testified on your other examination that at the time of the stock acquisition in 1919, the Thatcher Manufacturing Co. was actually in competition in interstate commerce, with the Travis, Essex, and the Lockport Glass Co's.

Answer. We were, and I assume that I testified to it.

Question. That is a fact?

Answer. That is.

Question. You do not know that the Thatcher Manufacturing Co. was in competition with the Woodbury Glass Co., do you?

Answer. I think I know we are not at that time.

Question. But if the Woodbury Glass Co. was actually engaged in manufacturing milk bottles and in selling them in interstate commerce in 1919, in the Middle Western States, then the Thatcher Manufacturing Co. was in competition with it at that time, was it not?

Answer. If they were, yes.

Question. I am making that hypothetical.

Answer. Yes.

Question. And basing it on the statements made in the letter of Mr. Axton. Of course, you repeat that so far as your knowledge goes, you did not think the Woodbury Glass Co. was manufacturing milk bottles.

Answer. No; I feel that I know that they were not, from the fact that they had been members of this milk bottle manufacturers' exchange, and that they had been making reports.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. If Woodbury had been making milk bottles in August, 1919, the amount must have been very small to escape the attention of your organization, was it not?

Answer. Yes; I do not think they ever made over 25,000 gross in a year.

Question. How much was Thatcher Co. making at that time?

Answer. You have got it in the records here. I think we were making two or three hundred thousand gross; three or four hundred thousand gross.

Question. If I recollect rightly, the total milk bottle production at that time in the country was not far from a million gross?

Answer. Not far from that. All the manufacturers of milk bottles were not members of the exchange, but of those in the exchange the Thatcher Manufacturing Co. was furnishing a little over 50 per cent, so from that figure I estimate we were making in the neighborhood of about 40 to 45 per cent.

Question. In financing and putting through that bond issue, am I right in understanding that the Thatcher company at the beginning did not propose to put into that mortgage its own assets? I mean the assets of the original Thatcher company?

Answer. Well, we did not want to: no.

Question. You did not want to?

Answer. No.

Question. What made you put them in?

Answer. Because we could not possibly put it through without.

Question. The bankers insisted on it?

Answer. Yes, sir.

Question. But it was not your original intention to do it that way?

Answer. The original intention was to keep it entirely separate.

(Witness excused.)

(Discussion off the record.)

Mr. SMITH. Judge, as we have already discussed, I will not rest here because I would like to introduce further evidence on the question of milk bottle production. If you will allow me I would like to do this at a later date convenient to yourself and Colonel Brindley.

Examiner AVERILL. Do I understand, gentlemen, that the commission rests?

Mr. BRINDLEY. For the present.

Examiner AVERILL. Of course, they would be entitled to rebuttal. It rests in chief?

Mr. BRINDLEY. It rests at the present time.

Examiner AVERILL. And the respondent desires to introduce further testimony.

Then, gentlemen, we will adjourn until the 23d day of November, at 10 o'clock a. m., at the office of the commission in New York City, when the taking of further testimony will be resumed.

(Whereupon, at 3.15 o'clock p. m., an adjournment was taken until November 23, 1922, at 10 o'clock a. m. to the offices of the Federal Trade Commission, New York City.)

NEW YORK, *November 23, 1922.*

Met pursuant to adjournment, 10 o'clock a. m.

Before: E. M. Averill, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq. (Hartford, Conn.), for the respondent.

LUTHER M. KIMMEL, was thereupon called as a witness, and after being duly sworn, testified as follows:

Direct examination by Mr. SMITH:

Question. Will you give your address and occupation?

Answer. Winchester, Ind. I am now manager of the Woodbury Glass Co.

Question. How long have you been manager of that company?

Answer. I have been connected with the company for about 25 years in one capacity or another.

Question. How long manager?

Answer. Just this year.

Question. Has your work been such that you have been familiar with the production of the company?

Answer. I have.

Question. For how long?

Answer. For at least 20 years.

Question. On August 28, 1919, was the Woodbury Glass Co. making any milk bottles?

Answer. No, sir.

Question. How long before that time had they ceased making milk bottles?

Answer. July 31, 1919, as I remember, was the last date.

Question. Did they sell any milk bottles after August 28, 1919?

Answer. I would say in a small way that they may have sold a few.

Question. About how many?

Answer. From 500 to a thousand gross, probably.

Question. What sort of bottles were those?

Answer. A great many of them, probably the largest per cent of them, were what we would term mislettered or off capacity.

Question. By "off capacity" you mean too small or too large?

Answer. Yes; and also a portion of plain ware.

Question. Did the Woodbury company have on that date any contracts outstanding for delivery of milk bottles?

Answer. Yes.

Question. With whom?

Answer. As I remember, the Illinois Glass Co. and the Bessire company.

Question. The deliveries made after August 28, 1919, were made on those contracts?

Answer. Yes, sir.

Question. When did the Woodbury company decide not to make any more milk bottles?

Answer. It was the time or probably a little before the time that they entered into a contract with the Hartford-Fairmont Co., for automatic feeding devices. As I remember, that was either in early 1919 or late 1918. I am not quite sure as to the date.

Question. It was before August 28, 1919?

Answer. Yes, sir.

Question (handing book to witness). Glancing at that memorandum, which is the digest of the contracts, and refreshing your memory thereby, can you give any more definitely the date when the contracts with the Hartford-Fairmont Co., of which you spoke, were entered into? If you do not remember the date, never mind.

Answer. I thought it was in 1918, some time in 1918.

Question. Did that contract with the Hartford-Fairmont Co. call for the taking of Hartford-Fairmont feeders by the Woodbury company?

Answer. Yes.

Question. How many?

Answer. All told eight, I believe, that they were to take.

Question. At the time that contract was made how many feeders of the Hartford-Fairmont could have been used on your furnace equipment?

Answer. We had two furnaces at that time, and each furnace would accommodate two feeders.

Question. So that four of the feeders that you were to take would have taken up all your furnace capacity?

Answer. Yes, sir.

Question. Did those contracts with the Hartford-Fairmont Co. allow you to make milk bottles on the feeders?

Answer. No, sir.

Question. So your recollection of that contract with the Hartford-Fairmont is that it either determined or followed a definite policy of not making any more milk bottles by the Woodbury company?

Answer. Yes, sir.

Question. Do you know about what the total production of milk bottles in the country was in 1919?

Answer. No, I can not say that I do.

Question. What was the business reason which caused the Woodbury company to stop making milk bottles?

Answer. In the first place, the Woodbury Glass Co. never considered themselves very much of milk bottle manufacturers. In other words, it was a sort of makeshift at times when other lines were slow and dragged.

Question. Sort of a filler in?

Answer. Sort of a filler in; yes, sir.

Question. You said in the first place it was a filler in. Was there any other reason?

Answer. Our machine was [illegible]solete type of machine, and we never considered it profitable to make milk bottles.

Question. Do you remember whether there was any change in the price of milk bottles on those few gross that you sold after August 28, 1919, as compared with the price immediately before that date?

Answer. No, I can not recall.

Question. You did not have to do with price?

Answer. No.

Question. What was the main business of the Woodbury Glass Co. at that time?

Answer. At that time it was on wide-mouth and narrow-mouth condiment ware.

Question. It is still, is it not?

Answer. Yes.

Question. Do you remember how many milk bottles the Woodbury company made in 1918?

Answer. In 1918, it was approximately 34,000 gross.

Question. Do you remember how many in 1919?

Answer. In 1919 right close to 8,000 gross.

Question. In each case, those were the outside figures?

Answer. Yes; those were the maximum.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. How long had you been connected with the Woodbury Glass Co. prior to August, 1919?

Answer. I began in their employ in January, 1898.

Question. What position did you hold with the Woodbury Glass Co. in August, 1919?

Answer. Treasurer, I believe.

Question. And you were a stockholder of the Woodbury Glass Co.?

Answer. Yes.

Question. What disposition did you make of your stock?

Answer. That stock was sold afterwards, I believe, to the Guaranty Trust Co. That is where I received my check for the stock.

Question. Are you a stockholder in the company now?

Answer. No, sir.

Question. What is your position with the company at this time?

Answer. Nothing more than an employee.

Question. In 1919 and for some years prior thereto, the Woodbury Glass Co. did manufacture milk bottles?

Answer. Yes, sir.

Question. What disposition was made of the milk bottles manufactured by the Woodbury Glass Co.?

Answer. They were sold very largely to large jobbers.

Question. In what sections of the country?

Answer. They reached over the United States pretty generally.

Question. Did you ship milk bottles, or did the Woodbury Glass Co. ship milk bottles into States outside of Indiana?

Answer. Yes.

Question. Name some of the States into which they shipped milk bottles?

Answer. Wisconsin, Illinois, Missouri, some in Ohio, Michigan, I would say.

Question. Do you recall any other States into which they shipped milk bottles?

Answer. I think as far as California, probably.

Question. At that time, in the year 1919 and prior thereto, was the Woodbury Glass Co. in competition with other concerns making milk bottles?

Answer. I would say not directly in any large way.

Question. Not in any large way, you say?

Answer. Yes.

Question. Well, in any way whatever?

Answer. We sold a few gross to our local trade around Indianapolis and near-by Winchester. We simply sold direct.

Question. So in States other than Indiana, you had no competition in the sale of milk bottles?

Answer. I would say not.

Question. You had the field to yourselves?

Answer. Well, we sold our products to jobbers.

Question. Did any other milk-bottle manufacturers sell to jobbers?

Answer. I presume they did.

Question. Do you recall any milk-bottle concerns that sold to jobbers and purchasers or consumers in the territory in which the Woodbury Glass Co. sold milk bottles?

Answer. I do not know for a positive fact that there were any milk-bottle manufacturers who sold direct to those jobbers.

Question. Well, did they to anybody in the territory to which you sold?

Answer. Yes.

Question. What companies?

Answer. There is the Winslow Glass Co., Columbus.

Question. Can you name any others?

Answer. The Essex Glass Co. at Mount Vernon.

Question. Any others?

Answer. Those were the main ones that were selling in our territory, I would say.

Question. The Essex Glass Co., then, did sell in your territory?

Answer. Yes; I think they did to some extent.

Question. Do you know where the Essex Glass Co. was located?

Answer. Mount Vernon, Ohio.

Question. Do you know where the Travis Glass Co. was located?

Answer. Clarksburg, I believe.

Question. In what State?

Answer. West Virginia.

Question. Was the Travis Glass Co. in competition with the Woodbury Glass Co. in any section in selling milk bottles?

Answer. I could not say.

Question. But you do know that the Woodbury Glass Co. was in competition in the sale of milk bottles with the Essex Glass Co., do you not?

Answer. Yes; I know the Essex sold to some concerns that our bottles eventually went to; yes.

Question. In what States?

Answer. I do not recall now.

Question. Do you know, as a matter of fact, whether the Essex Glass Co. was in competition with the Woodbury Glass Co. in 1918 or in 1919 in the sale of milk bottles?

Answer. No, I can not say positively.

Question. Have you anything that might refresh your recollection on that question?

Answer. There might be something that would.

Question (handing paper to witness). What is the document you hold in your hand?

Answer. It seems to be a letter from the Illionis Glass Co. of Chicago.

Question. Did you ever see that letter before?

Answer. I probably did.

Question. When did you see it?

Answer. On the 21st of October, 1918, it seems to be stamped.

Question. Did you make any reply to that letter [handing another paper to witness]?

Answer. Yes, sir.

Question. And when did you reply to it?

Answer. On October 21.

Question. Of what year?

Answer. 1918.

Question. Have you a copy of your reply to the letter?

Answer. Yes, sir.

Question. And you are holding it in your hand, are you?

Answer. Yes, sir.

Question. Did you write the letter, a carbon copy of which you are holding?

Answer. I dictated the letter.

Question (handing paper to witness). While you were an officer of the Woodbury Glass Co., October, 1919, did you receive a letter under date of October 19, 1918, addressed to the Woodbury Glass Co. in reference to an order to A. L. Brumund, Waukegan, Ill.?

Answer. I understood you to say in 1919. Do you mean that?

Question. I meant the date on the letter. If I said 1919, I should have said 1918.

Answer. Yes, sir; 1918.

Question. You have that letter now in your hand, have you?

Answer. Yes, sir.

Question. Please read that letter so the reporter may copy it into the record.

Answer. (Reading:)

OCTOBER 19TH, 1918.

Subject: A. L. Brumund, Waukegan, Illinois.

THE WOODBURY GLASS COMPANY.

In reference to shipping order of August 23rd, account of order No. 6780, one carload of quart milk bottles to be shipped December 1st. This car is to come forward just as quickly as possible.

We feel that after this order is completed that it will be some time before we receive more orders from this customer as Essex has worked in on this account and has shipped this customer a carload of bottles and has very good chance of securing their new contract.

Essex has quoted $7.40 per gross on quart milk bottles delivered, whereas our cost is $7.31 per gross delivered in Waukegan. You can readily appreciate that we cannot agree to meet Essex's quotation, but thought it well to give you this information.

We are losing quite a little business to Essex since the last raise you made in price. You will note that very few orders have been placed by us in the last few weeks. Unless something is done pretty soon, we are going to lose all our business in this line.

CHICAGO.

Question. That letter, you say, was written by the Illinois Glass Co.?

Answer. Their Chicago branch, yes, sir.

Question. Did the Woodbury Glass Co. at that time have any contract with the Illinois Glass Co.?

Answer. They had a selling arrangement with the Illinois Glass Co. at that time.

Question. What was that selling arrangement?

Answer. I can not recall whether it was a written contract or whether it was a sort of verbal agreement on the sale, or rather to handle the milk bottles for Woodbury.

Question. What was the latter part of your statement?

Answer. Whether it was a written contract or whether it was simply a verbal arrangement whereby the Illinois Glass Co. sold milk bottles for the Woodbury Glass Co.

Question. But the Illinois Glass Co. did send orders to the Woodbury Glass Co. for milk bottles?

Answer. Yes, sir.

Question. And the Woodbury Glass Co. filled the orders of the Illinois Glass Co.?

Answer. Yes, sir.

Question. And shipped bottles into other States in conformity to those orders?

Answer. Yes, sir.

Question. After receiving the letter from the Illinois Glass Co., which you have just read, did you make any reply thereto [handing letter to witness]?

Answer. Yes, sir.

Question. Have you a copy of your reply to that letter?

Answer. This appears to be, yes, sir.

Question. Read to the reporter your reply to the letter from the Illinois Glass Co. which you have just read.

Answer. [Reading:]

OCTOBER 21, 1918.

Subject: A. L. Brumund, Waukegan, Illinois.

ILLINOIS GLASS COMPANY,
Chicago, Illinois.

GENTLEMEN: We have your letter of the 19th referring to shipping order on August 3rd, account of order No. 6780 for A. L. Brumund, Waukegan, Illinois, and note that customer now desires this car shipped at once in place of December 1st, and we will make such notation on the order and do the very best possible.

Also note what you say with regard to prices that are being made by the Essex Glass Company and no doubt Mr. Clark will write you on this subject.

Yours very truly,

WOODBURY GLASS COMPANY.
L. M. KIMMEL,
Secretary.

Question. Prior to August, 1919, for how many years had the Woodbury Glass Co. been manufacturing and selling milk bottles?

Answer. I just do not remember. It seems to me, though, it was about 1914 or 1915 we began making some milk bottles.

Question. And made them during every year until you ceased in 1919?

Answer. Yes; I think we made some milk bottles each year.

Question. And during that time, the Woodbury Glass Co. was equipped for manufacturing milk bottles, was it?

Answer. Yes; in a way.

Question. And did make and sell milk bottles whenever it felt so disposed, did it?

Answer. Yes.

Question. You spoke of a contract or license the Woodbury Glass Co. made for the use of the Hartford-Fairmont machine, and stated, I believe, that under that contract or license, the Woodbury Co. did not have the right to use the Hartford-Fairmont machine for making milk bottles?

Answer. Yes, sir.

Question. That is true, is it not?

Answer. Yes, sir.

Question. When did the Woodbury company begin manufacturing milk bottles by the use of the Hartford-Fairmont machine?

Answer. It was in 1919. I do not remember the date exactly, but it was in 1919 sometime.

Question. Was it prior or subsequent to the time that you sold your stock in the Woodbury Glass Co.?

Answer. It was prior. We began operating Hartford-Fairmont machines prior to the sale. I can not recall that date, but it just occurred to me that it was sometime in the spring of 1919, but it may have been earlier than that.

Question. If the Woodbury began making bottles with the Hartford-Fairmont machine prior to the sale of your stock in the Woodbury company, the use of the Hartford-Fairmont machine was not exclusive at the Woodbury plant, was it? In other words, you used other processes for making bottles besides the Hartford-Fairmont?

Answer. Yes, until we could get other tanks equipped.

Question. But during 1918, the Woodbury Glass Co. did manufacture and sell milk bottles?

Answer. In what year?

Question. In 1919.

Answer. Yes.

Question. And continued to do that at least up to within a month of the time that you sold your stock in the Woodbury company, did it not?

Answer. Yes.

Question. I believe you stated on direct examination that the Woodbury Glass Co. sold a few milk bottles after August, 1919?

Answer. Yes.

Question. When did you sell your stock in the Woodbury Glass Co.?

Answer. I think it was in August, 1919.

Question. What class of bottles did the Woodbury Glass Co. manufacture and sell after August, 1919?

Answer. Condiment ware.

Question. Please be a little more specific?

Answer. Such as ketchup, chili sauce, mustards, pickles and such lines.

Question. Anything else?

Answer. That is about the line.

Question. Do you recall whether it manufactured or sold any milk bottles at all subsequent to August, 1919?

Answer. I know there was none manufactured whatever after that time.

Question. Have you a copy of the Linton & Scott contract with you?

Answer. No, I have not.

Question. Prior to August, 1919, was the Woodbury Glass Co. in competition in any territory with the Thatcher Manufacturing Co. in the sale of milk bottles?

Answer. They may have been. I did not handle sales, and I do not recall definitely about that.

Question (handing paper to witness). Describe the document which you hold in your hand.

Answer. This appears to be a copy of a shipping order of the Illinois Glass Co.

Question. And addressed to whom?

Answer. Addressed to Woodbury Glass Co., Winchester, Ind., dated April 8, 1919.

Question. And it calls for what?

Answer. It calls for 200 gross quart private mold Wisconsin sealed milk bottles bulk.

Question. And was that order filled by the Woodbury Glass Co.?

Answer. I judge it was. A copy of the invoice is not attached. I judge it was.

Question. And that called for shipments when?

Answer. May 3.

Question. Of what year?

Answer. I judge 1919.

Question. And what is the notation in regard to the filling of that order?

Answer. The notation reads:

"The above car is to be followed with an additional car of quarts to be shipped the first of each month on account of this contract until notified to discontinue."

Question. Do you recall whether or not you received notice to discontinue those shipments?

Answer. No; I do not recall.

Question. Do you recall the last shipment that was made under that order, the date of the last shipment?

Answer. No; I do not.

Question. You have testified in regard to letters between the Woodbury Glass Co. and the Illinois Glass Co. regarding business in which the Essex Glass Co. was interested. Was there any competition between the Essex Glass Co. and the Woodbury Glass Co. after August 28, 1919, in the sale of milk bottles?

Answer. I could not say; I could not recall.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. During the year 1919, you were not in charge of sales, were you?

Answer. No, sir.

Qustion. You were familiar, however, with production of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Can you give me approximately the total 1919 production of the Woodbury company of all bottles in grosses?

Answer. 1919; my recollection is along about 140,000 gross.

Question. Do you remember the date of the Linton Scott agreement?

Answer. No, I do not. I could not say; I do not recall.

Question. Was it before or after August 28, 1919?

Answer. Before.

Question. Was that agreement just a selling agreement?

Answer. A selling agency.

Question. Did it cover the entire output of Woodbury company?

Answer. I think there were some reservations.

Question. You do not remember what those reservations were?

Answer. I think Mr. Axton reserved certain territories, and then, I think, Woodbury; but just the details of that, I do not recall.

Question. About what percentage of the total production in 1919 was the milk bottle production?

Answer. Right close to 5 per cent, as I remember it.

Question. And that was all before July 31, 1919?

Answer. Yes.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. What was the total production in gross bottles during the year 1918 by the Woodbury Glass Co.?

Answer. I can not recall that. It must have been right close to 200,000 gross.

Question. I believe you stated a few moments ago the total production during 1918 of milk bottles by the Woodbury Glass Co., did you not?

Answer. I do not think 1918; I thought 1919.

Question. What was the gross production of milk bottles by the Woodbury Co. during 1918?

Answer. About 34,000.

Question. Thirty-four thousand gross?

Answer. Yes.

Question. You stated that your contract with Linton & Scott was a sales agency contract, I believe [handing paper to witness]?

Answer. Yes.

Question. And did Linton & Scott give orders to the Woodbury Glass Co. for milk bottles?

Answer. They gave shipping instructions, yes.

Question. And the Woodbury Glass Co. filled the orders from Linton & Scott?

Answer. Yes.

Question. And did Linton & Scott send Woodbury Glass Co. orders for milk bottles?

Answer. Yes.

Question. And what disposition was made of those orders?

Answer. They were filled.

Question. To what States did the Woodbury Glass Co. ship milk bottles on orders received from Linton & Scott during the years 1918 and 1919?

Answer. Outside of California, I do not think they sold a great many milk bottles, as I recall it.

Question. But you did ship milk bottles to California?

Answer. Yes.

Question (handing paper to witness). On orders received by the Woodbury Glass Co. from the Illinois Glass Co., did you ship milk bottles into the State of California?

Answer. I do not recall shipping to California for account of the Illinois Glass Co. We may have, but I do not recall it.

Question. Do you recall whether the Woodbury Glass Co. shipped milk bottles to the State of California during the year 1919 on orders received from Linton & Scott?

Answer. No, I do not recall.

Question (handing paper to witness). During the month of June, 1919, did the Woodbury Glass Co. ship milk bottles into any States outside of Indiana?

Answer. Yes, sir.

Question. Into what States?

Answer. Illinois.

Question. What is the document you hold in your hand?

Answer. This is a copy of a letter that our production office addressed to the mold room setting out a list of milk bottle orders which would constitute a car to be shipped to Fifty-ninth and Laflin Streets, that is, Chicago, Ill.

Question. What is the date of that memorandum?

Answer. June 2.

Question. Of what year?

Answer. 1919.

Question. And was the memorandum complied with?

Answer. I would say yes.

Question (handing paper to witness). What is the document you now hold in your hand?

Answer. This is also a memorandum from the production department to the mold room instructing them to list certain molds to fill certain orders which would constitute a pool car to be delivered to Elsmere Station.

Question. Where was that?

Answer. That is Chicago, Ill.

Question. What is the date of that memorandum?

Answer. June 6, 1919.

Question. And was that memorandum complied with by the Woodbury Glass Co.?

Answer. I would say yes.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. Mr. Kimmel, you gave as two reasons why the Woodbury company before August 28, 1919, decided to stop manufacturing milk bottles as follows:

First, that they were entering contracts to use the Hartford-Fairmont feeder which they could not use for milk bottles, but which would take up their entire furnace capacity.

Second, because their business in milk bottles was extremely small and unprofitable, only a side issue.

Now, did the merger, so to speak, or the combination which began on August 28, 1919, have anything to do with the adoption of that policy?

Answer. No.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. You say it did not, so far as you know?

Answer. It did not.

Mr. BRINDLEY. That is all.
Mr. SMITH. That is all.
(Witness excused.)

FRANCIS E. BALDWIN was thereupon recalled, and having been previously sworn testified as follows:

Direct examination by Mr. SMITH:

Question. Mr. Baldwin, when Mr. Libbey, under the contract of August 28, 1919, formally withdrew December 11, 1919, the entire liability for the four notes of the Guaranty Trust Co., aggregating some $2,000,000, fell upon you personally, did it not?

Answer. Yes, sir. The notes amounting to $1,610,000 and then $250,000 to go to Mr. Libbey.

Question. Amounting to $1,800,000?

Answer. $1,860,000; $2,000,000 would not have made any difference.

Question. It was close enough to $2,000,000?

Answer. Yes; plenty.

Question. At that time or when the August 28, 1919, contract was made, was there any contract, understanding, or relation of any sort between you personally and the Thatcher Manufacturing Co. by which the Thatcher Manufacturing Co. was in any way bound or could be bound to take up that liability on those notes?

Answer. No, sir.

Question. There was no agreement, understanding, collection contract of any sort?

Answer. None whatever.

Question. So that at the time you faced that liability individually?

Answer. Yes, sir.

Question. On the other hand, was there on August 28, 1919, or at any time up to the bond issue, any contract or understanding or agreement or relation between you and Thatcher Manufacturing Co. by which the Thatcher company could have demanded from you the stocks of the three companies or the assets of the three companies or the stock of the Woodbury Glass Co.?

Answer. No, sir; down to the time the agreement was made with the bankers.

Question. Which was in April, 1920?

Answer. Yes, sir.

Question. Did you personally consider, from August 28, 1919, down to the bankers' contract the possibility of getting the Thatcher company to take over this liability?

Answer. No, sir; not until we financed it.

Question. Why didn't you?

Answer. Because I felt that I had a moral obligation to the stockholders of the Thatcher Manufacturing Co. to protect them, and until we could finance it, it did not look like an advantageous proposition to Thatcher Manufacturing Co., in my judgment.

Question. You regarded that as a matter which turned on your trust relationship as an officer of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And you had no right to get out of that obligation by putting it on them?

Answer. No, sir.

Question. Between those two dates, August 28, 1919, and the bankers' contract in 1920, were you under any obligation, agreement, understanding, or contract of any sort whatsoever which would have prevented you from selling, we will say, to the Owens company or to the Hartford-Fairmont company, or to any outsider either the assets or the stock of these companies?

Answer. Neither one.

Question. You were free to dispose of them as you chose and to whom you chose?

Answer. Yes, sir.

Question. When you and Mr. Libbey first talked of the plan which consummated in the plan of August 28, 1919, what was the substance of the plan in your minds?

Answer. Mr. Libbey wished to get the Hartford-Fairmont patents and control in the United States and, as he expressed it, he would buy that and these other companies and would make me president of that corporation. He used the expression that it would be a larger corporation than the Owen Bottle Co.

Question. Mr. Libbey was then the president of the Owen Bottle Co.

Answer. Yes; and a very wealthy man.

Question. And largely interested in that company?

Answer. Yes, sir.

Question. So that was the original expression, to form a company of Hartford-Fairmont and these other outside concerns and you were to be president of it?

Answer. Yes, sir.

Question. But it was essential, in Mr. Libbey's plan, that the Hartford-Fairmont should be gotten in?

Answer. Yes, sir.

Question. And when that fell through, he exercised his privilege and withdrew?

Answer. Yes, sir.

Question. After December 11, 1919, and this $1,800,000 obligation came down on you personally, did you get busy trying to meet that situation?

Answer. Yes, sir.

Question. How long did you have to do it in?

Answer. Mr. Libbey insisted on his name being taken off at once, and I saw Mr. Libbey and said it would be impossible, and he said his name could stay on the note for the year.

Question. What do you mean "for the year"?

Answer. For the balance of the year.

Question. Until what date?

Answer. The Guaranty Trust Co. had agreed to carry those notes for one year from August 28, 1919.

Question. So you had until August 28, 1920?

Answer. Yes, sir.

Question. What did you do then?

Answer. I did not do as much as Mr. Mandeville did.

Question. What did you do personally? I will ask Mr. Mandeville about that later.

Answer. Of course, I was in very frequent consultations with Mr. Mandeville, daily except when he was away; and I had to be in Elmira. I was down here in New York quite a good deal. Mr. Mandeville would see different parties, and would come back and talk with me at the club in regard to it, and then we also got in touch with a concern in Ohio—Canton, Ohio, I believe it was—and they were met in Toledo.

It is not just clear in my mind whether I was present in Toledo or not. I rather think I was. But they came on to Elmira and spent a day or two there and we had quite a little correspondence with them in regard to a set-up whereby we could take care of these notes.

Then Mr. Mandeville saw a large number of people here in New York.

Question. You know, as a matter of fact, that he did?

Answer. I know he told me he did, and I never caught him in a lie yet, so I believed it.

Question. A few questions about this milk-bottle matter: Do you know what the total milk-bottle production of the country was in 1919?

Answer. About a million gross; from a million to a million and a quarter.

Question. Mr. Kimmel has testified as to the existence of certain contracts for milk bottles which the Woodbury company had prior to August 28, 1919, and on which deliveries were made after that date?

Answer. Yes, sir.

Question. Are you familiar with those contracts?

Answer. Well, I am not especially familiar with the contracts. I knew of them, and we filled the orders that they made.

Question. Do you know whether the prices that you filled them at were the same as existed before August 28, 1919?

Answer. They were; yes, sir.

Question. No change in price?

Answer. No change. There was no change in price until the latter part of 1920.

Question. So that the transactions of August 28, 1919, did not have any effect upon that price?

Answer. None whatever.

Question. It is the custom of the trade, is it not, to make long term contracts for milk bottles?

Answer. For a year; yes, sir.

Question. Are you familiar with the so-called Linton & Scott contract?

Answer. Yes, sir.

Question. Do you remember the date of it or approximate date?

Answer. No; the first I heard of the Linton-Scott contract was when we were negotiating this matter, they told me that they had a contract with Linton & Scott to sell their entire output of condiments, glass ware.

Question. When you say "they" you mean Woodbury?

Answer. I mean Woodbury, and I mean Mr. Clark and Mr. Axton.

Question. All of the Woodbury Company?

Answer. Of the Woodbury Company.

Question. You heard of that contract, then, before this August 28, 1919, transaction?

Answer. Yes, sir.

Question. Do you remember the general terms of that contract?

Answer. Yes, sir; they were to sell their entire output with the exception that Mr. Axton reserved the right to sell certain whisky bottles, and Mr. Clark reserved the right to sell to some packers in Chicago. He was to handles them direct, but they were to have a commission, Linton & Scott was to have a small commission upon the amount of the sales of those people.

Question. Did that contract cover milk bottles?

Answer. It did not.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. What were those contracts you spoke of a moment ago that you said the Woodbury Glass Co. filled after August, 1919?

Answer. I did not know that I said that. I said that I never saw the contract. I knew nothing about it, but they told me they had some contracts with those people.

Question. With what people?

Answer. The Bessire company and the Illinois Glass Co., and they sent down orders to us and we filled them.

Question. Who filled them?

Answer. The Thatcher Manufacturing Co.

Question. Those orders were for what?

Answer. Milk bottles.

Question. Were any of those orders filled by the Woodbury Glass Co.?

Answer. No, sir; because they were making no milk bottles at that time and had not been for some time prior to August 28.

Question. But on August 28, 1919, the Woodbury Glass Co. did have outstanding contracts with certain parties for milk bottles, did it?

Answer. With those two parties, so they told me. I think also that they got some bottles filled by other people, but I am not sure of that.

Question. And after August, 1919, the contracts which the Woodbury Glass Co. had for milk bottles were filled by the Thatcher Manufacturing Co.?

Answer. Well, we filled such specifications as were sent on to us by them.

Question. For milk bottles?

Answer. Yes, sir: for milk bottles.

Question. So the contracts that Woodbury Glass Co. had outstanding for milk bottles in August, 1919, were completed by the Thatcher Manufacturing Co., were they?

Answer. I do not know how far they went on the completion. I simply know that we made and shipped to them milk bottles as they asked us to.

Question. Shipped to whom?

Answer. Shipped to the party to whom they were directed.

Question. That is, to the purchaser from the Woodbury Glass Co.?

Answer. No; they were shipped to the purchaser from the jobber. The jobber, the Illinois Glass Co. or Bessire company, would sell bottles to milk dealers and the bottles would be shipped to the milk dealer, not the Bessire company or Illinois Glass Co.

Question. But shipped to the dealer on the order of the Illinois Glass Co. and Bessire & Co.?

Answer. Yes, sir.

Question. And those were orders which were to be sent by Woodbury Glass Co., were they?

Answer. I assume that is true; yes, sir.

Question. So the manufacture and sale of milk bottles by the Woodbury Glass Co. absolutely ceased after August, 1919, did it?

Answer. It had ceased prior to that time, and they could not make any milk bottles.

Question. I believe you stated they had outstanding contracts, though, in August, 1919, for milk bottles?

Answer. They told me they had contracts with these people.

Question. And the Thatcher Manufacturing Co. filled those contracts after August, 1919?

Answer. We made some bottles and shipped on them. I do not know how nearly they were filled. Bessire & Co. are buying bottles off us now.

Question. But the production of milk bottles by the Woodbury Glass Co. absolutely ceased after August, 1919?

Answer. No, sir; they ceased on the 31st day of July, 1919. They never made any milk bottles afterwards.

Question. When did you ascertain that the production of milk bottles by Woodbury Glass Co. ceased on July 31, 1919?

Answer. The actual date I got from Mr. Kimmel.

Question. When did you get that date?

Answer. In a letter from Mr. Kimmel?

Question. When?

Answer. Since our last hearing.

Question. So then you do not know it of your own knowledge?

Answer. No, sir; I know that Mr. Kimmel told me that they had stopped making milk bottles, and Mr. Axton told me so.

Question. You testified at a former hearing in this place on November 3, 1922, did you not?

Answer. Yes, sir; if that is the date; I do not remember the date.

Question. And on that date you testified that the Woodbury Glass Co. had stopped making milk bottles several months before August, 1919, did you not?

Answer. I so understood it and so believed; yes, sir; I did.

Question. And you also testified on November 3, 1922, that "when we took over the matter, they had no contracts for milk bottles"?

Answer. I so testified and so thought at the time.

Question. And you also testified that no milk bottles were there in stock?

Answer. I so testified.

Question. And you also testified that there was not any milk bottles in stock?

Answer. I so testified.

Question. You testify differently now, do you?

Answer. No; I have not testified on that point as to milk bottles in stock.

Question. What about the contracts?

Answer. When I got home and investigated the matter and got this letter from Mr. Kimmel, I made inquiries of my first assistant, and I found that we had made some bottles that they said were unfilled contracts that they had.

Question. And is that all you know about it, what information you got from Mr. Kimmel?

Answer. From Mr. Kimmel and Mr. Collins, our assistants.

Question. So that you were mistaken in your testimony, then, the first part of this month?

Answer. I was very thoroughly mistaken. I knew their contract for these machines and knew they had them in operation for the Hartford-Fairmont feeders and knew they could not make milk bottles with them.

Question. And did you also know that they could make milk bottles by a process different from the Hartford-Fairmont process?

Answer. I knew that they could make milk bottles different, but I knew that they had made a contract for more feeders than their plant would accommodate, and therefore I knew that they felt that I knew that they would not be making any milk bottles.

Question. You merely thought that?

Answer. I formed that conclusion; yes, sir.

Question. You did not know it, as you testified on November 3?

Answer. I evidently did not.

Question. Let us review again the transaction in reference to the acquisition of the stock. The Woodbury Glass Co. is in existence as a corporation to-day, is it not?

Answer. It is.

Question. Who owns the stock of that corporation?

Answer. Practically, the Thatcher Manufacturing Co. There are a few shares—in fact, all the shares standing in other names. I think we discovered that the stock has not been transferred to the Thatcher Manufacturing Co., but I believe it stands in my name, except a few shares.

Question. You certainly do not claim ownership to it, do you?

Answer. None whatever. The Thatcher Manufacturing Co. owns the stock of the Woodbury Glass Co.

Question. When you and Mr. Libbey and Mr. Ford met in the office of the Guaranty Trust Co. in August, 1919, you executed three notes to the Guaranty Trust Co.?

Answer. Mr. Libbey did not meet there.

Question. Well, his representative was there?

Answer. His representative, Mr. Wilcox, his private secretary, and Mr. Ford, representing Mr. Libbey.

Question. Three notes were executed that day to the Guaranty Trust Co., I believe, were they?

Answer. Yes, sir.

Question. You executed one note as maker. Is that true?

Answer. Yes.

Question. And a note was executed by Mr. Ford as maker?

Answer. Yes, sir.

Question. And a note executed by Mr. Libbey as maker?

Answer. Yes, sir.

Question. And each of you indorsed the other two notes made by the other two?

Answer. Yes, sir.

Question. So that all three of you were bound on all three notes?

Answer. Yes, sir.

Question. Then the money secured on these three notes, together with $500,000 secured from the sale of capital stock of the Sterling Glass Co., was used to purchase the capital stock of the Travis, Essex, Lockport, and Woodbury Glass Cos., was it?

Answer. Yes, sir.

Question. And on that day, August 28 or 29, 1919, the capital stock of the Travis, Essex, Lockport, and the Woodbury Glass Cos. was delivered to the Guaranty Trust Co. as collateral security for the notes made by you, Mr. Libbey, and Mr. Ford.

How long did the capital stock of the Travis Glass Co. remain with the Guaranty Trust Co.?

Answer. The stock of all these companies remained with the Guaranty Trust Co. until the money was received from the sale of the bonds which—I was refreshed. I told you once it was in August, but it was just before the 4th of July of 1920.

Question. Refresh your recollection again. Isn't it a fact that in December, 1919, the stock of all four companies was sent to Elmira, N. Y.?

Answer. I believe it was sent to the Second National Bank of the city of Elmira, N. Y., but it was in the possession of the Guaranty Trust Co., under their control.

Question. Why was the stock of the four companies sent in December, 1919, to Elmira, N. Y.?

Answer. For the purpose of having some transfers made of stock, as I remember it now.

Question. Have you the stock books of the Travis, Essex, Lockport, and Woodbury Glass Cos. here to-day?

Answer. Mr. Mandeville here says "Yes." You telegraphed him to bring them, and I have not seen them at all.

Question (handing book to witness). Examine that book you have in your hand and see if you can identify it.

Answer. It is the stock book of the Travis Glass Co.

Question. Examine that book, and tell us how the stock of the Travis Glass Co. stood on August 28, 1919.

Answer. How it stood on August 28?

Question. Yes; 1919.

Answer. I find a certificate here of 61 shares to H. E. Travis, trustee.

Question. Give the date of it.

Answer. It is dated August 20, 1919.

I find another certificate of 62 shares to Laura M. Travis, dated August 20, 1919. This stock is canceled, but it was issued, and I

understand stood in the name of these people on the 28th day of August. It does not show here what date it was transferred. This stock was issued on the 20th of August, 1919, to Laura M. Travis, and therefore I assume that she owned this on the 28th.

Question. From an examination of that book can you tell how the stock of the Travis Glass Co. stood on August 28, 1919?

Answer. I can tell you the date of the issue of the certificates prior to August 28, 1919.

Question. Is it not a fact that on August 28, 1919, all the outstanding stock of the Travis Glass Co. was deposited with the Guaranty Trust Co. as collateral security for three notes?

Answer. Well, no; it was special collateral security for one note. I assume that it was all transferred. I was so informed, and so believed that at the time, but personally I did not touch it or check it. But it was checked, and I was told that it was transferred.

Question. You do not know about that, of your own knowledge?

Answer. No; not from personal examination I do not. The Guaranty Trust Co. told me they had it, and Mr. Axton checked it over and it was turned over in his presence.

Question. Do you know what disposition was made of the stock of the Travis Glass Co. after August 28, 1919?

Answer. Certain of it was issued to different people. One share was issued to me on the 5th day of December.

Question. Call off that clearly, the number of the certificates, the date, and the amount of the stock that was issued to you after August 28, 1919?

Answer. Certificate No. 39, one share of stock, issued December 5, 1919, to F. E. Baldwin.

Certificate No. 40, one share of stock issued to R. W. Niver, Elmira, N. Y., dated December 5, 1919.

Certificate No. 41, one share of stock issued to Frank L. Collins, Elmira, N. Y., dated December 5, 1919.

Certificate No. 42, one share of stock issued to P. M. Robinson, Clarksburg, W. Va., dated December 5, 1919.

Certificate No. 43, one share of stock issued to H. E. Travis, Clarksburg, W. Va., dated December 5, 1919.

Certificate No. 44, 495 shares of stock issued to H. C. Mandeville, Elmira, N. Y., December 5, 1919.

Afterwards that 495 shares, certificate No. 45, was issued to F. E. Baldwin, dated January 5, 1920, and was transferred from H. C. Mandeville.

Question. And those entries you have just read are the last record of stock transactions of the Travis Glass Co.?

Answer. In this book; yes, sir.

Question. When the stock of the Travis Glass Co. was transferred on December 5, 1919 to the parties whose names you have called, what consideration did they pay for that stock?

Answer. None.

Question (handing another book to witness). In August, 1919, when you and Mr. Libbey and Mr. Ford made the three notes at the Guaranty Trust Co., the stock of the Essex company was also left with the Guaranty Trust Co. as collateral security, was it not?

Answer. Yes, sir; for one of those notes.

Question. And thereafter, the stock in the Essex Glass Co. was sent by the Guaranty Trust Co. to Elmira, N. Y., and a transfer in the stock of the Essex Glass Co. then made, was it not?

Answer. Yes, sir.

Question. Have you the stock book of the Essex Glass Co. in your hands?

Answer. I have.

Question. Examine that book, and tell us how the stock of the Essex Glass Co. was transferred at Elmira, N. Y., in 1919?

Answer. Certificate No. 78, one share of stock issued to F. E. Baldwin, December 8, 1919.

Certificate No. 79, one share of stock issued to R. W. Niver, December , 1919.

Certificate No. 80, one share of stock issued to F. L. Collins, December 8, 1919.

Certificate No. 81, one share of stock issued to R. M. Lamb, December 8, 1919.

Certificate No. 82, one share of stock issued to Charles M. Tigner, December 8, 1919.

Certificate No. 83, one share of stock issued to Watson Pickard, December 8, 1919.

Certificate No. 84, 994 shares issued to H. C. Mandeville, December 8, 1919.

Certificate No. 85, 994 shares issued to Frank L. Collins, January 5, 1920, transferred from H. C. Mandeville.

Question. The transfers made on December 8, 1919, to the persons whose names you have just read, included all the outstanding stock of the Essex Glass Co. at that time?

Answer. So I understood; yes, sir.

Question. What consideration did those parties pay for the stock of the Essex Glass Co. which was transferred to them?

Answer. None; no consideration. Of course, I am stating that, but I do not know. Mr. Mandeville might have paid for those 994 shares.

Question. You did not pay anything for the stock in any of the companies issued to you?

Answer. No; I did not; and nothing was paid, as I understand it.

Question (handing book to witness). The stock of the Lockport Glass Co. on August 28, 1919, was delivered to the Guaranty Trust Co. as collateral security for one of the notes made by you, Mr. Libbey, or Mr. Ford, as was the other stock, was it not?

Answer. Yes, sir.

Question. Have you the stock book of the Lockport Glass Co. with you?

Answer. I have it in my hand.

Question. Was the stock of the Lockport Glass Co. sent to Elmira, N. Y., by the Guaranty Trust Co. in the month of December, 1919, for transfer or reissue?

Answer. I assume so; yes, sir.

Question. Can you look at the stock book and tell how the stock was reissued at Elmira, N. Y., in December, 1919?

Answer. Certificate No. 107, dated December 6, 1919, F. E. Baldwin, one share.

Certificate No. 108, one share, December 6, 1919, H. C. Mandeville.

Certificate No. 109, one share, December 6, 1919, F. L. Collins.

Certificate No. 110, one share, December 6, 1919, issued to R. W. Niver.

Each of those persons reside in Elmira, N. Y.

Certificate No. 111, one share, December 6, 1919, issued to R. P. Luce, Lockport.

Certificate No. 112, one share, December 6, 1919, issued to W. E. McComb.

Certificate No. 113, one share, December 6, 1919, to R. S. Keep, Lockport.

Certificate No. 114, 1,760 shares, dated December 6, 1919, to H. C. Mandeville, Elmira, N. Y.

Question. The certificates, the numbers of which you have just called, as issued to the parties whose names you have read, included all the stock of the Lockport Glass Co. in December, 1919, did it?

Answer. I so understood it; yes, sir.

Question. And all the stock of the Lockport Glass Co. was transferred or reissued at Elmira, in December, 1919, to the persons whose names you read?

A. Yes, sir.

Question. What consideration did those persons pay for the stock issued to them in the Lockport Glass Co.?

Answer. None; no consideration, I understand it.

Question. Have you the stock book of the Woodbury Glass Co. accessible?

Answer. Yes, sir. [Witness produces book.]

Question. On August 28, 1919, the stock of the Woodbury Glass Co. was deposited with the Guaranty Trust Co. at New York as collateral security for the notes or one of the notes made by you, Mr. Libbey, or Mr. Ford on that date, was it not?

Answer. Yes, sir.

Question. And the stock of the Woodbury Glass Co. remained with the Guaranty Trust Co. as collateral security until it also was sent to Elmira, N. Y., for transfer or reissue?

Answer. Well, it remained with them. Even then, it was in their possession.

Question. But it was sent to either their agent or representative at Elmira, N. Y.?

Answer. Yes, sir.

Question. Do you recall the name of that agent or representative?

Answer. Second National Bank, I believe.

Question. Can you examine the stock book of the Woodbury Glass Co. and tell how the stock was reissued at Elmira, in December, 1919?

Answer. Yes, sir.

Question. Please do so.

Answer. Certificate No. 85, one share, issued to F. E. Baldwin, December 8, 1919.

Certificate No. 86, one share, issued to George H. Clark; his address was Winchester, Ind.—it does not appear here.

Certificate No. 87, one share, issued to F. L. Collins, of Elmira, N. Y.—that does not appear here, but I know his address—December 8, 1919.

Certificate No. 88, one share, issued to L. M. Kimmel, of Winchester, Ind., December 8, 1919.

Certificate No. 89, one share, issued to R. W. Niver, Elmira, N. Y., December 8, 1919.

Certificate No. 90, 1,995 shares, issued to H. C. Mandeville, December 8, 1919. Mr. Mandeville is of Elmira.

Certificate No. 91, 1,995 shares, issued to F. E. Baldwin—myself—Elmira, N. Y., January 5, 1920, of the stock issued to Mr. Mandeville, and his certificate was canceled.

Question. The certificates whose numbers you have just called show that in December, 1919, all the stock of the Woodbury Glass Co. was issued to the persons whose names you called?

Answer. Yes, sir; according to the records.

Question. What consideration did those persons pay for that stock issued to them in the Woodbury Glass Co?

Answer. Nothing; no consideration.

Question. After the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. had been reissued, as you have just detailed, at Elmira, N. Y., what disposition was made of the stock?

Answer. As far as we were concerned, it was left with the Second National Bank and they sent it back to the Guaranty Trust Co.

Question. As a matter of fact, it was returned to the Guaranty Trust Co.?

Answer. Sure; it was in their possession all the time.

Question. And the Guaranty Trust Co. continued to hold the stock of the Travis, Essex, Lockport, and Woodbury Glass Cos. as collateral security for the three notes until the three notes were paid?

Answer. Yes, sir.

Question. When were the notes to the Guaranty Trust Co. paid?

Answer. I believe it was the Saturday before the 4th of July.

Question. Of what year?

Answer. 1920. I swore once before, however, it was in August, but I was mistaken.

Question. When the notes to the Guaranty Trust Co. were paid, what disposition was made of the stock in the four companies?

Answer. You mean the actual physical disposition?

Question. Yes, sir; when the notes were paid?

Answer. I think it was turned over to Mr. Mandeville. It surely was not turned over to me.

Question. It was at least surrendered by the Guranty Trust Co.?

Answer. Yes, sir.

Question. The stock of the Woodbury Glass Co. stands to-day as it stood in December, 1919, with the exception of the reissue to you in January, 1920, of the stock issued to Mr. Mandeville?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. owns the stock of the Woodbury Glass Co., does it not?

Answer. It does.

Question. The particular individuals in whose name it stands do not really own the stock, do they?

Answer. No, sir.

Question. They paid nothing for it, did they?

Answer. No, sir.

Question. The three notes to the Guaranty Trust Co. made by you, Mr. Libbey and Mr. Ford were paid from the proceeds of a bond issue of the Thatcher Manufacturing Co., were they not?

Answer. Yes, sir.

Question. And when those notes were so paid, the stock of the four companies held by the Guaranty Trust Co. as collateral security was surrendered and given to you or Mr. Mandeville?

Answer. Given to Mr. Mandeville.

Question. The stock of the Woodbury Glass Co. stands to-day in the same position or record that it stood when the three notes to the Guaranty Trust Co. were paid?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. owns all the stock of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Thatcher Manufacturing Co. acquired the capital stock of the Woodbury Glass Co. by paying the three notes at the Guaranty Trust Co., did it not?

Answer. I think, as a matter of law, that that would follow, but that is a matter of law, isn't it? You know I am not a lawyer now.

Question. It acquired the stock, though, as a matter of fact, did it not?

Answer. We claim that the Thatcher Manufacturing Co. owns that stock, Colonel Brindley.

Question. What became of the Travis, Essex, and Lockport companies after the three notes to the Guaranty Trust Co. were paid?

Answer. You mean the stock?

Question. No, sir. Mr. Reporter, will you repeat the question?

(The question was repeated by the reporter as above recorded.)

Answer. Prior to the payment of those notes, the physical assets of those three companies were transferred to the Thatcher Manufacturing Co.

Question. All the assets of the Travis, Essex, and Lockport companies were transferred and conveyed to the Thatcher Manufacturing Co., were they?

Answer. Yes, sir.

Question. And what disposition, then, was made of the companies?

Answer. Afterwards—after the notes were paid, the companies were dissolved; the corporations were dissolved.

Question. And they are not now in existence?

Answer. They are not; no, sir.

Question. The only company of the four now in existence is the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Travis, Essex, and Lockport Glass Cos. at the time of the acquisition of the stock in August, 1919, were engaged in manufacturing milk bottles, were they not?

Answer. Yes, sir.

Question. In competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You knew that at the time of the acquisition of the stock in August, 1919, did you?

Answer. Certainly.

Question. You did not know at that time, in August, 1919, that the Woodbury Glass Co. was making and selling milk bottles, did you?

Answer. I thought I knew that they were not making and selling milk bottles at that time; yes, sir.

Question. And the situation was different between the Woodbury Glass Co. and the Travis, Essex, and Lockport Glass Cos., so far as your information went?

Answer. Yes, sir.

Question. The Travis, Essex, and Lockport companies were competitors of the Thatcher Manufacturing Co., were they not?

Answer. They were.

Question. You did not think the Woodbury company was a competitor of the Thatcher Manufacturing Co.?

Answer. I thought I knew that it was not.

Question. And after the payment of the three notes to the Guaranty Trust Co. from the proceeds of the bond issue by the Thatcher Manufacturing Co., the Travis, Essex, and Lockport companies were dissolved?

Answer. Yes, sir.

Question. But the Woodbury Glass Co. was not dissolved.

Answer. No, sir.

Question. The bond issue made by the Thatcher Manufacturing Co., about which you have spoken, was secured by a mortgage given by the Thatcher Manufacturing Co. on all its property and assets, including all the property and assets of the Travis, Essex, and Lockport companies, was it not?

Answer. They did not have any assets at that time.

Question. Then it included the property of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Which included also the former assets and property of the Travis, Essex, and the Lockport companies?

Answer. Yes, sir.

Question. And that mortgage also conveyed and carried as security for the bond issue the capital stock of the Woodbury Glass Co., I believe?

Answer. I believe so; yes, sir. Of course, the mortgage speaks for itself.

Question. You mentioned a contract made by you and Mr. Libbey and Mr. Ford, after the making of the three notes to the Guaranty Trust Co. in August, 1919.

Answer. In a prior examination; yes, sir.

Question. You recall that contract, do you not?

Answer. I remember the contract; yes, sir.

Question. That was made by you and Mr. Libbey and Mr. Ford and the Sterling Glass Co.?

Answer. Yes, sir.

Question. The stock in all these four companies were sent to Elmira, N. Y., and the then outstanding stock canceled and all stock

reissued to other parties in the first part of December, 1919, was it not?

Answer. Yes, sir; I believe the dates are December 8, 1919.

Question. December 8, 1919, was the last date on which that stock was reissued?

Answer. I think so.

Question. You named or nominated the persons to whom that stock should be issued, I believe?

Answer. Yes, sir; I did.

Question. And the larger part of the stock in all four companies, in every instance, was issued to Mr. H. C. Mandeville, Mr. F. L. Collins and Mr. R. W. Niver, was it not?

Answer. Yes, sir.

Question. All the stock in the four companies was issued to you, Mr. Mandeville, Mr. Collins and Mr. Niver, except one share to one or two other persons for the purpose of qualifying directors and officers, was it not?

Answer. Two or three other persons in each case.

Question. And only one share of stock issued to other persons in those instances?

Answer. Yes, sir. That was so we could have a directors' meeting at that place, by only having one of us go down from Elmira.

Question. And you and Mr. Mandeville and Mr. Collins and Mr. Niver are stockholders and officers and directors or employees of the Thatcher Manufacturing Co., are you not?

Answer. Yes.

Question. And were so in December, 1919?

Answer. Yes. Mr. Collins is an employee; he is not a director.

Question. But an employee of the Thatcher Manufacturing Co.?

Answer. Yes.

Question. And is yet in the office of the Thatcher Manufacturing Co.?

Answer. He has been for 14 years, I believe.

Question. And you have stated that the stock was issued to these persons who were nominated by you?

Answer. Yes, sir.

Question. The stock in the four companies was reissued to the four persons nominated by you prior to the time that you received the notice from Mr. Libbey and Mr. Ford that they withdrew from the transaction?

Answer. Yes, sir. These companies were all being run as separate companies.

Question. And being directed from where?

Answer. Being directed by me from Elmira.

Question. New York?

Answer. Yes, sir.

Question. From the office of the Thatcher Manufacturing Co.?

Answer. My office is there; yes, sir.

Question. When did you first visit the plant of the Woodbury Glass Co. after the transaction on August 28, 1919?

Answer. I can not tell you; some little time afterward.

Question. Did you go there prior to December, 1919?

Answer. No, sir; I think not. I think Mr. Niver was out there prior to that.

Question. Did you send him out there?

Answer. I did. I am not sure that he did, but I think that he did.

Question. The acquisition of the stock in the Travis, Essex, Lockport, and Woodbury Glass companies was all acquired in one transaction, was it not?

Answer. Yes, sir.

Question. The three notes given by you, Mr. Libbey and Mr. Ford to the Guaranty Trust Co. in August, 1919, were all paid by one transaction, were they not?

Answer. Yes, sir.

Question. And those three notes to the Guaranty Trust Co. were paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And by the payment of those three notes, the Thatcher Manufacturing Co. secured or acquired the stock of the Woodbury Glass Co.

Mr. SMITH. Just a moment. Colonel, would you mind leaving out the word "acquired"? I do not like to have the witness forced on that particular word. I do not like to have the thing forced in such a way. That calls for a conclusion on his part.

By Mr. BRINDLEY:

Question. All right; just let that go. I will ask this question: You have stated, and you are willing to repeat, that the Thatcher Manufacturing Co. owns all the capital stock of the Woodbury Glass Co., are you not?

Answer. Yes, sir.

Question. The Thatcher Manufacturing Co. did acquire all the outstanding stock of the Woodbury Glass Co.?

Answer. That is a conclusion of law that you are a better judge and the commission than I am.

Question. If you object to answering that way, I will just ask you this: By the transactions you have detailed, the Thatcher Manufacturing Co. became the owner of the capital stock of the Woodbury Glass Co., did it not?

Answer. I think it did.

Question. And the capital stock of the Travis, Essex, and the Lockport Glass Cos. were included in the transaction in which the stock of the Woodbury Glass Co. was included?

Answer. It was all one transaction.

Question. And the stock of the four companies was all included in the transaction?

Answer. We paid the notes, and they turned the stock over.

Question. Of all the four companies?

Answer. Yes, sir.

Question. To you and Mr. Mandeville?

Answer. To Mr. Mandeville.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. Was there ever a share of any of the stocks of these four companies that stood in the name of the Thatcher Manufacturing Co. on the records of the four companies?

Answer. No, sir; I assumed I would have testified without looking that the Woodbury stock had been transferred to the Thatcher Manufacturing Co.

Question. But your examination of the books shows it is not so?

Answer. Yes, sir.

Question. Your examination of the books which was made in response to Colonel Brindley's question shows that not a share of any one of those companies stood on the books in the name of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Therefore the title which you refer to as the ownership by the Thatcher company is not a record title; it is an equitable title, I take it?

Answer. Yes, sir.

Question. It is your conclusion of the equitable rights derived from certain transactions?

Answer. Yes, sir; as a matter of equity they were entitled to the stock.

Question. It is your conclusion as to the stock?

Answer. Yes, sir.

Question. You said that Mr. George Clark told you and also Mr. Axton that the Woodbury had stopped making milk bottles?

Answer. Yes, sir.

Question. Do you remember when they told you that?

Answer. Mr. Clark told me that in a meeting of the Milk Bottle Manufacturers' Exchange.

Question. Was it before August 28, 1919?

Answer. It was before August 28, 1919.

Question. How long before? Have you any idea?

Mr. BRINDLEY. I do not want to be technical, your Honor, or interpose needless objections. We have both been very liberal in this examination. I believe I will object to too much hearsay testimony.

Mr. SMITH. That is not hearsay.

Examiner AVERILL. Gentlemen, the objection is overruled. The witness has previously testified to certain things, and I think that counsel has a right to go into them to see upon what the witness has based the testimony as previously given.

By Mr. SMITH:

Question. What was the official relation of Mr. Clark to the Woodbury company?

Answer. He was vice president, I believe, and treasurer.

Question. Up to the time of his death?

Answer. Yes; he was not treasurer up to the time of his death; he was vice president up to the time of his death.

Question. Do you remember about when he made this statement to you about the stoppage of the manufacture of milk bottles?

Answer. I know it was prior to August 28 in a meeting of the Milk Bottle Manufacturers' Exchange. He had told me several times of this contract we had for this feeder months before, and that they were going to stop manufacturing milk bottles. It must have

been the early part of August that he told me that they had stopped manufacturing milk bottles.

Question. Do you remember when Mr. Axton made the statement?

Answer. He made the statement to me during his negotiations. He came to see me several times.

Question. Prior to August 28, 1919?

Answer. Prior to August 28, 1919.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. You heard Mr. Kimmel testify to-day that the Woodbury Glass Co. made milk bottles in 1919, did you not?

Answer. Yes, sir.

Question. You also heard him testify that they made milk bottles in 1918, did you not?

Answer. Yes, sir; and I knew that they were making them.

Question. And did you know that they were making them in 1919?

Answer. I knew that they were in the early part of 1919, the very early part.

Question. You are president of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And have been president for how long?

Answer. Twenty-two years; nearly twenty-three.

Question. You made a report to the directors and stockholders of the Thatcher Manufacturing Co., dated February 18, 1920, did you not?

Answer. Yes, sir.

Question. Is that a copy of the report [handing paper to witness]?

Answer. I assume it is. I have not compared it, but I assume it is the copy of the report. This is Exhibit K to the stipulation signed by W. H. Fuller and Thatcher Manufacturing Co., by Herbert Knox Smith.

Question. The copy to which you referred is Exhibit K to the stipulation of facts entered into between the chief counsel of the Federal Trade Commission and the respondent?

Answer. Yes, sir.

Question. In your report to the directors and stockholders of the Thatcher Manufacturing Co., you made certain statements regarding the transaction in connection with the stock of the companies named?

Answer. Yes, sir.

Question. Will you please read for the examiner so that the reporter may copy into the record that part of your annual report beginning on page 3 of Exhibit K?

Answer. It is a part of the record already.

Question. Yes, sir; but I would like to have you read it again.

Answer (reading). "During the years starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont feeder and milk-bottle machine and milk bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company held the exclusive licenses for the Hartford-Fairmont feeder and machines for the manufacture of

milk bottles in the U. S. The Woodbury Glass Company had a non exclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and machines and milk-bottle business of the J. T. & A. Hamilton Company.

"The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company and Mr. William Ford, a large stockholder in the Owens company.

"We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by Thatcher Manufacturing Company."

Question. You made the report from which you have just read an extract?

Answer. I did; yes, sir.

Question. And you made it shortly after the stock in the four companies had been sent to Elmira and reissued, as you have heretofore detailed?

Answer. I made it in February, and that was done in December.

Question. Preceding?

Answer. Preceding.

Question. And while the matter was pretty fresh on your mind?

Answer. The matter was reasonably fresh on my mind; yes, sir.

Question. And you made these statements in your annual report prior to any proceedings against the Thatcher Manufacturing Co. by the Federal Trade Commission?

Answer. Certainly.

Question. And before you had any idea that the Federal Trade Commission would take any action regarding this stock transaction?

Answer. Certainly.

Mr. BRINDLEY. I believe that is all.

Mr. SMITH. That is all.

(Witness excused.)

H. C. MANDEVILLE, recalled, having been previously sworn testified further as follows:

Direct examination by Mr. SMITH:

Question. When Mr. Libby, December 11, 1919, withdrew from the August 28, 1919, contract, you were aware that the liability on the notes to the Guaranty Trust Co. of approximately $1,800,000 had fallen personally upon Mr. Baldwin?

Answer. Yes, sir.

Question. You were then a director of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You were also counsel for that company?

Answer. Yes, sir.

Question. Will you tell me what action you then took to relieve Mr. Baldwin of that liability? Whom did you see? What did you do?

Answer. It was my duty to try to raise the money so that Mr. Baldwin could pay the notes. I undertook to try to finance the payment of the notes. I can not give you the exact order in which I did these different events.

Question. It does not make any difference. All of them were done before the bond issue?

Answer. I saw the Guaranty Trust Co. bond department, and I tried to make some plan with them by which they would undertake an issue of bonds on the four companies, and I was referred by them to different officials in the company and went from pillar to post, trying to get them to undertake some financing.

In the process of that, I prepared a set of figures, consolidated balance sheets of the four companies, consolidated earnings experience of the four companies.

Question. When you say the four companies, you mean the Travis, Lockport, Essex, and Woodbury?

Answer. Yes. I got up the history of the different companies, and furnished them what information I could. They told me that we had plenty of time, that it was a very unfavorable time to try to do any financing, that the market was very bad, that money was very scarce and that the history of the companies as to earnings was not satisfactory, and that we had better wait until later, and that at the proper time, they would let me know when to undertake the financing, and that in the meantime I could wait, perfectly secure because I had ample time.

But I felt very much worried over the situation, and I went out to get others to see if they would finance. I went to Campbell, Heath & Co., who were bankers at 5 Nassau Street, New York. I took up with them the question of financing, but previous to that and before I went to the Guaranty Trust Co. I went to see Mr. Libbey at the Plaza Hotel, New York City, and presented to him a plan that I had by which we would put the four companies together and have an issue of a first preferred stock of a million dollars and of a second preferred stock of an equal amount, with sinking fund provision for the retirement of the preferred, and asked him if he, under the circumstances, would not help us finance by taking that second issue of stock.

He was very decidely opposed to it; said that he was surprised that I should even suggest it to him, and refused to do it.

Campbell, Heath & Co. had been familiar with these four companies before August 28 by reason of Mr. Axton having been to them to help him finance, and at their suggestion I made up different sets of figures, that is, the figures were the same, but arranged in different methods that they wanted, that they thought would be attractive.

After long negotiation with them they concluded that they could not handle it.

In the process of those negotiations I met a man by the name of Mr. Henshaw—I do not recall his initials. He was rather an outside man—I did not know just what his connection was—but he thought he would be able to help me finance it.

I also went to Boston to see a bond house in Boston by the name of Baker, Ayling & Co. because I knew them. I went over the matter with them, and they told me that they could not undertake it at the time; that the market was in such condition and it was so hard to sell bonds and to get money, that they could not take it up.

I also had some negotiations with a bond house in Canton, Ohio.

Question. Do you remember their name?

Answer. I think it was the Canton Securities Co.; but they said that they, together with their New York connections, could handle it, and were particularly able to do it because they were an Ohio concern, and if we would make it into an Ohio company, if we would put these companies together into an Ohio company, there was a market in Ohio for Ohio preferred stocks.

I met them at Toledo once with Mr. Baldwin, and they came to Elmira and spent several days, and I made a new arrangement of the same figures for them and got out a lot of data that they wanted.

I also, through Campbell, Heath & Co. and through the Guaranty Trust Co., got in touch with a bond house in New York City named Eldridge & Co. It was a new house that had come to New York, and I felt that because they had not any issues, that they might be interested in this issue as their initial venture, and I was recommended to them by the Guaranty Trust Co.

By that time I had accumulated a large portfolio of different suggestions as to financing, and they took those papers and wanted to consider them, particularly one of their leading men, who lived in St. Louis.

Then I got in touch with the bond house of Bonbright & Co. in the Equitable Building, New York. I met various different men in that organization in the department that did the investigating. Finally I met Mr. Lockett, who was the man in authority.

During this time I had also talked with Blodgett & Co., and I was not getting anywhere with it. I could not get it down to any real plan. But finally Mr. Lockett told me that if I could get some one else, some other house that would join with them, that they would go in for one million dollars of a two million dollar issue.

By that time I had abandoned the issuance of preferred stock, finding that the market would not take preferred stock, and that the only chance was to sell a direct issue.

Mr. Lockett did not commit himself in any way, but I think more because of my importunity than anything else, he said that if I could get some one else to go in with them so that they would not take the whole load, he would consider a million dollars.

I then got in touch with the firm of Hemphill, Noyes & Co., 37 Wall Street, and Mr. Griffiths of that firm took all my papers and studied them and said that he would have to have still a different set-up of it, that we would have to reorganize the whole plan, and after a long negotiation with him, he said that he would go along with Bonbright & Co. for $1,000,000 upon a certain definite plan.

Then we had a draft of that plan prepared, which matured into the bankers' agreement that is in evidence.

Question. About how long did this whole process take?

Answer. It took all winter.

Question. The majority of your time?

Answer. Yes, sir.

Question. From December 11, 1919, to somewhere in April, 1920?

Answer. Yes, sir.

Question. And as you stated to me, you saw some seven or eight concerns or individuals on this matter?

Answer. Yes, sir; I had to be very careful about it because I could not have it rejected by any one concern. If I once was turned down, then I would have to tell the other firms that somebody had rejected it; so I had to go carefully and not get into a position where anybody said "No" to me.

But when I found that they were not interested, I withdrew from the negotiations.

I also talked with the Chase Securities Co., which is an adjunct of the Chase Bank.

Question. Was Mr. Baldwin frequently with you in New York on that business?

Answer. Yes, sir. He did not go with me to the different negotiations, but was here and I would confer with him at night and try again the next morning.

Question. Mr. Baldwin testified this morning that there was no conference agreement or understanding of any sort which would have allowed him to command the Thatcher company to take over this liability. Is that your understanding?

Answer. Yes, sir; I talked with some of the directors of the Thatcher company about it.

Question. What was the nature of that discussion?

Answer. The particular discussion that I have in mind was with Mr. S. G. H. Turner, who was a director and president of the Second National Bank, and represented in the board the J. S. Fassett interest in the Thatcher company. He said that it had been discussed among the directors, and that it was impossible for the Thatcher company to take over these companies because it would swamp them if it did.

Question. So both you and Mr. Baldwin laid aside the possibility or the propriety of having the Thatcher company assume this liability?

Answer. Yes, sir; because we could not tell how to meet it, and directly we found it could be financed, we took it up again with the Thatcher company.

Question. Mr. Baldwin also testified that there was no contract, understanding, or agreement of any sort by virtue of which the Thatcher company could have demanded the stock of the four companies from Mr. Baldwin. Is that your understanding?

Answer. Yes, sir.

Question. You have heard Mr. Baldwin's statement of the original plan which he and Mr. Libbey had worked out. Were you also aware of the nature of that plan?

Answer. Yes, sir; I was present at most of the interviews.

Question. And his statement of it agrees with your understanding?

Answer. Yes ,sir.

Question (handing paper to witness). Will you examine that document and tell me what it is?

Answer. This is an assignment of the license of the Hartford-Fairmont Co. with the Travis Glass Co. It is a three-party agreement between the Travis Glass Co., Hartford-Fairmont Co., and the Thatcher Manufacturing Co.

Question. Will you read that assignment, please?

Answer. The title is "Assignment of license."

"Memorandum of an agreement made as of first day of June, 1920, by and between Hartford-Fairmont Company of Canajoharie, New York, and Travis Glass Company of Clarksburg, West Virginia, and Thatcher Manufacturing Company of Elmira, New York.

"Witnesseth: That whereas the Travis Glass Company is the owner of a certain license and lease agreement entitled 'License and lease No. 7' from Hartford-Fairmont Company to Travis Glass Company dated December 16th, 1919, licensee's plant at Weston, West Virginia:

"And whereas the said license contains a prohibition against assignment:

"And whereas the said Thatcher Manufacturing Company desire to acquire the said license;

"Now, therefore, it is hereby agreed between the parties hereto, each in consideration of the sum of $1.00 and other valuable considerations by the other in hand paid, receipt of which is hereby acknowledged, and in further consideration of the convenants and others herein contained, as follows, namely:

"Hartford-Fairmont Company hereby consents to the assignment by the Travis Glass Company to the Thatcher Manufacturing Company of the aforementioned license, the Travis Glass Company hereby assigns the aforementioned license to the Thatcher Manufacturing Company and the Thatcher Manufacturing Company hereby assumes the said license, subject to all of the terms, conditions, and obligations thereof, as fully and completely as if its name appeared there in place of the name of the Travis Glass Company."

Then there follows the licensor's affidavit, the licensee's affidavit, and the assignee's affidavit.

By Examiner AVERILL:

Question. What date is that?

Answer. June 1, 1920.

Examiner AVERILL. Who executed it on behalf of the Travis company?

Mr. SMITH. It is executed on behalf of the Travis company by F. E. Baldwin, president, and in the presence of Mr. Collins and Mr. Hastings.

By Mr. SMITH:

Question. I show you another document [handing paper to witness]. Will you tell me what that is?

Answer. That is a consent by the Hartford-Fairmont Co. to the assignment of license and lease agreement No. 4 to the Thatcher Manufacturing Co. by the Travis Glass Co.

Question. Of what date?

Answer. The 1st of June, 1920.

Question. It is similar to the one you have just read?

Answer. Yes, sir.

Question. I show you another document [handing paper to witness]. What is that?

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 5 to the Thatcher Manufacturing Co. by the Travis Glass Co.

Question. Of what date?

Answer. June 1, 1920.

Question. Substantially similar?

Answer. The same as the other that I read.

Question. I show you another one [handing paper to witness]. What is that?

Answer. It is a consent by the Hartford-Fairmont Co. to assignment of license and lease No. 11 to Thatcher Manufacturing Co. by Essex Glass Co., dated the 1st day of June, 1920.

Question. I show you another one [handing paper to witness]. What is that?

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 9 to Thatcher Manufacturing Co. by Essex Glass Co., dated June 1, 1920.

Question. Another one [handing paper to witness].

Answer. This is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 10 to the Thatcher Manufacturing Co. by Essex Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 3 to the Thatcher Manufacturing Co. by the Essex Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. Consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 1 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 5 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 8 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 2 to the Thatcher Manufacturing Co. by J. T. & A. Hamilton Co., dated June 1, 1920.

Question. Will you count those assignments?

Answer. These are all in the same form as the one I read. There are 11 in all.

Question. Those assignments cover all the licenses of the Hartford-Fairmont machines to these various companies of milk bottle units that were outstanding on that date?

Answer. Yes, sir.

There were only 11 machines altogether of the milk bottle units?

Answer. Yes, sir; only 11 units.

Question. You do not happen to remember the date of that Linton & Scott contract?

Answer. No, sir; it was before August 28, 1919, because it was in existence at the time we took over the company. I have seen the contract and have a copy of it at home, but I do not remember the date.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. Are you still vice president of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And also its chief counsel?

Answer. Yes, sir.

Question. What is the largest producer of milk bottles in the United States?

Answer. Thatcher Manufacturing Co.

Question. The acquisition by the Thatcher Manufacturing Co. of the rights, assets, and properties of the Travis, Essex, and the Lockport Class Cos. put the Thatcher Manufacturing Co. in a dominating position in the United States in the manufacture and sale of milk bottles, did it not?

Answer. No; I should not say so. It made them the largest single producer.

Question. Producing more than all the other manufacturers of milk bottles in the United States, did it not?

Answer. Yes.

Question. As counsel for the Thatcher Manufacturing Co., you handled all the legal work in connection with the transactions involving the Travis, Essex, Lockport, and Woodbury Cos.?

Answer. Yes.

Question. The Travis, Essex, and Lockport Cos. have been dissolved, have they?

Answer. Yes, sir.

Question. Can you give us the dates of the dissolution of those three companies?

Answer. They are in the stipulation, I think. I can give you the dates now by refreshing my recollection.

The Sterling Glass Co. was dissolved September 9, 1920.

The Lockport Glass Co. was dissolved October 20, 1920.

The Essex Glass Co. was dissolved December 18, 1920.

The Travis Glass Co. was dissolved January 13, 1921.

Question. You were present at the Guaranty Trust Co. in New York City on the 28th day of August, 1919, when the three notes were made by Mr. Baldwin, Mr. Libbey, and Mr. Ford and the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. was acquired?

Answer. Yes, sir.

Question. Did you know at that time that the Woodbury Glass Co. was engaged in manufacturing and selling milk bottles?

Answer. No, I did not.

Question. Did you hear the testimony of Mr. Axton in this proceeding on November 3, 1922?

Answer. Yes, sir.

Question. And you heard his testimony in regard to the manufacture of milk bottles by the Woodbury Glass Co.?

Answer. Yes, sir; I did.

Question. Was that the first information you had concerning that matter?

Answer. Yes, sir.

Question. Until Mr. Axton testified on November 3, 1922, that the Woodbury Glass Co. had been making milk bottles, you did not know it?

Answer. I knew that they had made some in previous years, but I did not know that they were making any bottles at the time of the purchase of the stock by Mr. Baldwin.

Question. But at that time you did know that the Travis, Essex, and Lockport Cos. were making milk bottles?

Answer. Yes, sir.

Question. And that those three companies were making and selling milk bottles in competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. But you did not know that, you say, so far as the Woodbury Glass Co. was concerned?

Answer. I did not; no, sir.

Question. After Mr. Baldwin, Mr. Libbey, and Mr. Ford executed the three notes to the Guaranty Trust Co., they entered into an agreement or contract dated August 28, 1919, with the Sterling Glass Co., did they not?

Answer. Yes, sir.

Question. And you drew that contract?

Answer. I did.

Question. And a copy of that contract is attached to the stipulation as Exhibit G?

Answer. Yes, sir.

Question. And at that time you were the president of the Sterling Glass Co.?

Answer. Yes, sir.

Question. That contract recited the making of the three notes in question and recited or described the collateral security attached to the three notes?

Answer. Yes, sir.

Question. It also recited in that contract that the "Sterling company undertakes to assume and does hereby assume all the liabilities of the other parties hereto upon the said notes, whether maker or indorser"?

Answer. Yes, sir.

Question. And the first provision, after the preliminary recitals in the contract, is that the "Sterling company hereby undertakes to and does hereby save the other parties to this agreement and each of them harmless from any and all liability or obligation by reason of the making or indorsing of any of the notes above recited, and upon the payment of the said notes, all of the collateral thereto shall become the property of the Sterling company?"

Answer. Yes, sir.

Question. What is the collateral referred to in that agreement?

Answer. It is the collateral that is recited in the recitals describing the notes and the collateral for each note.

Question. And it describes and refers to the shares of the capital stock of the Travis, Essex, Lockport, and Woodbury Glass Cos.?

Answer. Yes, sir; at that time I expected that the Sterling company would be expanded into the company that would take over the Hartford-Fairmont and whatever plan Mr. Libbey designated.

Question. At that time, as I believe you have heretofore testified, the immediate proposition involved was the acquiring and paying for the stock in the four companies?

Answer. Yes, sir.

Question. In August, 1919, and when the negotiations for the acquisition of the stock were in progress, the time given under the options held by Mr. Axton for the purchase of the stock was comparatively short?

Answer. Yes, sir.

Question. And so, when Mr. Baldwin, Mr. Ford, and Mr. Libbey agreed to take it over, the time in which you could perform was rather brief?

Answer. Yes; we had to work very fast.

Question. And, as a matter of fact, the transaction by which the stock in the four companies was first acquired was consummated in New York City on August 28, 1919, and that was only a few days before the option time expired?

Answer. Yes, sir.

Question. At New York, on August 28, 1919, the entire transactions and accomplishments were simply the purchase of the stock in the four companies and the making by Mr. Baldwin, Mr. Libbey, Mr. Ford, and the Sterling Glass Co. of the contract to which you have just referred?

Answer. Yes, sir; I wrote a letter right afterwards, when it was clear in my mind, setting down what took place.

Question. The details of it?

Answer. Yes, sir.

Question. And a copy of that letter is in the record as an exhibit to the stipulation?

Answer. Yes, sir.

Question. That was written shortly after you returned to Elmira?

Answer. Yes, sir.

Question. So at New York, on August 28, 1919, the stock in the Travis, Essex, Lockport, and Woodbury Co. was purchased from the owners of the stock from or by the proceeds of the three notes made by Mr. Baldwin, Mr. Libbey, and Mr. Ford, and the $500,000 belonging to the Sterling Glass Co.?

Answer. Yes, sir.

Question. And the stock of the four companies was left with the Guaranty Trust Co. as collateral security for the notes?

Answer. Yes; just as recited.

Question. Just as recited in the contract of August 28?

Answer. Yes, sir.

Question. And the stock in the four companies remained with the Guaranty Trust Co. as collateral security for the notes without any

change in record, title, rigistration or otherwise until in December, 1919, did it?

Answer. Yes, sir; it remained there, and I think was sent up to Elmira and certain transfers were made.

Question. In December, 1919, from December 5 to 8, inclusive, the stock in all four companies was reissued at Elmira to the parties named by Mr. Baldwin in his testimony?

Answer. Yes, sir. Then they were indorsed in blank by each of the owners and returned to the Guaranty Trust Co.

Question. Each certificate of stock in any of the four companies as issued to the stockholder named was indorsed in blank and returned to the Guaranty Trust Co.?

Answer. Yes, sir. The Second National was only the agent of the Guaranty as a matter of convenience, so that we could make the transfers in Elmira and not here.

Question. And the stock in all these companies was reissued at Elmira to persons nominated by Mr. Baldwin?

Answer. Yes, sir.

Question. And the stock, as you said, returned to the Guaranty Trust Co. and was held by the Guaranty Trust Co. as collateral security until the notes were paid?

Answer. Yes, sir.

Question. The notes to the Guaranty Trust Co. were finally paid during the year 1920 by you and Mr. Baldwin, were they not?

Answer. Well, we were both present at the time they were paid They were paid by the proceeds of the bond issue.

Question. The money with which these notes were paid was solely the money of the Thatcher Manufacturing Co. arising from the proceeds of its bond issue?

Answer. Yes, sir; and also from the sale of some stocks.

Question. From the sale of some stock?

Answer. Yes.

Question. Who was present at the Guaranty Trust Co. in addition to you and Mr. Baldwin when the notes were paid?

Answer. The representatives of the Guaranty with Mr. Hatcher and some of his assistants.

Question. Who represented the Guaranty Trust Co.?

Answer. Mr. Baldwin and myself and Mr. Decker, the secretary of the Thatcher company, and Mr. Beekman of Beekman, Menken & Griscom, and his assistant, representing the bankers.

Question. What do you mean by "representing the bankers"?

Answer. He was counsel for the bankers.

Question. Who were doing what in regard to the transaction?

Answer. Who were buying the bonds that we were issuing.

Question. The bankers whom you mentioned who were present at that time were those taking the Thatcher Manufacturing Co. bond issue and furnishing the money?

Answer. Yes, sir; it was all done around a table. The bonds were delivered and the checks were delivered in payment of it and deposited in the Guaranty Trust Co.

Question. At that transaction, when the three notes to the Guaranty Trust Co. were paid, the money as the proceeds of the bond issue was simply then and there delivered and simultaneously delivered to the Guaranty Trust Co. in payment of the notes?

Answer. They were deposited to the Thatcher Manufacturing Co.'s credit, and the money that resulted from the sale of the bonds was deposited to the credit of the Thatcher company, and the Thatcher company gave its check in payment of the note.

Question. It was deposited to the credit of the Thatcher Manufacturing Co. with the Guaranty Trust Co.?

Answer. With the Guaranty Trust Co.

Question. At that time and as a part of that transaction, what papers, documents, or written instruments did you have which you delivered at that time?

Answer. I delivered the mortgage and the bonds.

Question. You delivered, then, the mortgage executed by the Thatcher Manufacturing Co. to secure the bond issue?

Answer. Yes, sir; and I delivered the bonds executed by the Thatcher Manufacturing Co.

Question. Do you recall whether you had any other instruments or deeds with you that you delivered at the same time?

Answer. I do not think at that time, but before that time we had already delivered extracts of title and conveyances that had been approved by the counsel for the bankers.

Question. What do you mean by "conveyances"?

Answer. I mean a deed of the real estate of the three companies, Essex, Travis, and Lockport; a separate deed by each corporation and a bill of sale from each corporation of the personal property.

Then there were all the evidences of titles, abstracts, insurance policies, and certificates of payment of taxes, all the evidences of title that the trust company wanted in advance of satisfying the mortgage.

Question. Isn't it true, as a matter of fact, the deeds from the Travis, Essex, and Lockport companies were delivered that day at the Guaranty Trust Co. to the representatives of the bondholders and by them sent out to the appropriate place for reporting?

Answer. That is in substance true. The actual physical delivery had been made a few days before that to the counsel for the bankers.

Question. That is, your deeds had actually been signed?

Answer. And handed to them for their approval, but the physical delivery, I suppose, took place at the time of the one transaction.

Question. That was all one transaction?

Answer. Yes, sir.

Question. The representatives or agents of the bondholders had the deeds recorded in the appropriate place?

Answer. That was in the mortgage, that the trustee would see to the recording of the mortgage.

Question. And he did so?

Answer. Yes; he did see to the recording of the mortgage papers and the title papers.

Question. It was all one transaction?

Answer. All except the question of licenses. That had preceded that.

Question. And when the proceeds of the bond issue were deposited with the Guaranty Trust Co. and checks thereon given by the Thatcher Manufacturing Co. for the amount of the notes, the notes held by the Guaranty Trust Co. were surrendered?

Answer. Yes, sir.

Question. They were delivered to whom?

Answer. I think I took them. No, the notes themselves I did not take. Mr. Baldwin took the notes.

Question. Those were the three notes executed and endorsed by Mr. Baldwin, Mr. Libbey, and Mr. Ford on August 28, 1919?

Answer. Yes, sir.

Question. And what was done by the Guaranty Trust Co. with the collateral security when the notes were paid?

Answer. The stock of the Travis, Essex, and Lockport Cos. that were mentioned in the collateral were turned over to me, but the Woodbury stock, which comprised all the common capital stock of the Woodbury company, stayed with the trustee and were covered by the lien of the mortgage. The mortgage was not only a direct lien but a collateral trust.

Question. And the mortgage securing the Thatcher Manufacturing Co. bond issue included the stock of the Woodbury company; that is, the common stock?

Answer. Common stock; yes, sir.

Question. And that stock was left to the Guaranty Trust Co.?

Answer. Yes, sir; and is there now.

Question. What disposition has been made of that mortgage securing the bond issue?

Answer. It has been paid, as a matter of fact, and has not yet been discharged of record, but I am in process of getting it discharged now.

Question. For all practical purposes, the mortgage has been paid?

Answer. Yes, sir.

Question. The bonds secured by the mortgage have been called by the Thatcher Manufacturing Co.?

Answer. Been called, and the money deposited to pay them with. Under the terms of mortgage, I thereupon became entitled to a discharge, and the lien was transferred to the money instead of to the property.

Question. As a matter of fact, the Thatcher Manufacturing Co. now owns all the property, including that described in that mortgage, free from the lien of the mortgage?

Answer. Yes, sir; free from the actual lien. There is still a record lien, but it is only a question of procedure to have it discharged.

Question. To have it discharged of record?

Answer. Yes.

Question. What was the date when the notes to the Guaranty Trust Co. were paid?

Answer. It was on the Saturday before July 4, 1920.

Question. We are speaking of the three notes made by Mr. Baldwin, Mr. Libbey, and Mr. Ford.

Answer. Yes, sir.

Question. Will you please repeat the date?

Answer. The Saturday before July 4, 1920. I know we had a hard time to have them come down on Saturday to close. They wanted the holiday, and I wanted the notes paid.

Question. The contract of August 28, 1919, between Mr. Baldwin, Mr. Libbey, Mr. Ford, and the Sterling Glass Co., provided among

other things that upon the payment of the three notes to the Guaranty Trust Co., all of the collateral shall become the property of the Sterling company?

Answer. Yes, sir; still there is something further in the contract that bears on that. That is not all the contract.

Question. There are several other features in the contract?

Answer. With reference to the ownership of the stock.

Question. To which in particular do you refer?

Answer. I refer to the obligation that Mr. Baldwin assumed in case Ford or Libbey withdrew. Then the question of where the stock should go is a matter of law.

Question. There was not in the contract, though, any stipulation that in the event of Mr. Libbey's retirement that the stock should go otherwise than as recited, to the Sterling company?

Answer. No; there is no such provision. I felt that the Sterling company was the owner of the stock if the plan went through that we then had in mind.

Question. That was the idea you had in mind in drawing the contract?

Answer. Yes, sir.

Question. And at that time, when the contract was made, one-half the capital stock of the Sterling company was owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Subsequently, and after December 11, 1919, the stock in the Sterling Glass Co., subscribed and paid for by Libbey, was transferred to the Thatcher Manufacturing Co.?

Answer. Yes. The Thatcher Manufacturing Co. paid the money and took the stock.

Question. Paid to Libbey the amount of money he had paid for that stock in the Sterling company with interest?

Answer. With interest.

Question. And the stock was thereupon transferred to the Thatcher Manufacturing Co.?

Answer. Yes.

Question. Can you ascertain or recall the date when the transaction with Libbey occurred in regard to the Sterling company stock?

Answer. I can not recall it. You will find it, I believe, in Mr. Collin's testimony. The check was dated June 7, 1920. It was for $261,750, which was $250,000 principal, and interest $11,750.

Question. And on the same day, June 7, 1920, the Sterling Glass Co. executed an instrument conveying to the Thatcher Manufacturing Co. all its rights, property, and privileges, including its right under the contract of August 28, 1919?

Mr. SMITH. Colonel, does not the record speak for itself?

Answer. Yes, sir; it is Exhibit P of the stipulation.

Mr. BRINDLEY. That is all.

Mr. SMITH. That is all.

(Witness excused.)

Examiner AVERILL. Does the respondent rest?

Mr. SMITH. The respondent rests.

Examiner AVERILL. The commission has already rested?

Mr. BRINDLEY. I do not think we have anything else.

Examiner AVERILL. Then, gentlemen, the examiner will take the transcript of the record and the exhibits as soon as they come in from the official reporter, and as early thereafter as is possible will prepare the finding of facts and a conclusion in the nature of the examiner's opinion in connection with the matter, which paper will be served upon counsel for the commission and counsel for the respondent.

Thereafter, the gentlemen on either side have 10 days within which to file any exceptions which they may desire to the report of the trial examiner, and then briefs can be prepared; the time will be set for that purpose and served upon opposing counsel, and later the matter will come on for hearing before the commission upon all the testimony and evidence, upon the report of the trial examiner and the exceptions thereto, upon the briefs and arguments of counsel.

Gentlemen, the trial examiner also is to set the time for filing briefs, and counsel for the commission will have 30 days from the service upon him of the findings of fact and conclusion of the trial examiner, and counsel for the respondent will have 45 days from the service upon counsel of the respondent wherein to file his briefs.

(Whereupon, at 2.05 o'clock p. m., the hearing in the above-entitled cause was declared closed.)

COMMISSION'S EXHIBIT NO. 1.

Thatcher Manufacturing Company.

Main office Elmira, N. Y.

ELMIRA, N. Y., *April 28th, 1921.*

FEDERAL TRADE COMMISSION,
Adrien F. Busick, Esq., Acting Gen'l Counsel,
Washington, D. C.

Thatcher Mfg. Company—Docket 738.

GENTLEMEN: As requested in your favor of the 13th inst., we have answered the questions therein contained to the best of our ability as below.

If our answers are not clear, or if there is anything further that we could furnish, please let us know and we shall be glad to do so.

1. The following concerns were engaged in manufacturing and selling milk bottles in the United States in the years 1917, 1918, and 1919:

(1) Thatcher Mfg. Company.
(2) Lockport Glass Company.
(3) Travis Glass Company.
(4) Essex Glass Company.
(5) J. T. &. A. Hamilton Co.
(6) Atlantic Bottle Co., New York City.
(7) Liberty Glass Co., Sapulpa, Okla.
(8) Illinois-Pacific Glass Co., San Francisco, Calif.
(9) Pacific Coast Glass Co., San Francisco, Calif.
(10) Buck Glass Co., Baltimore, Md.
(11) Winslow Glass Co., Columbus, Ohio.

2. We do not know the total number of milk bottles of all kinds annually produced and sold in each of the years 1917, 1918, and 1919, and have no means of knowing.

3. Thatcher Mfg. Company manufactured and sold milk bottles during the years 1917, 1918, and 1919, as follows:

1917—357,996 gross.
1918—331,055 gross.
1919—288,713 gross.

4. The total number of milk bottles produced and sold during the years 1917, 1918, and 1919 by the Travis Glass Company, Essex Glass Co., Lockport and Hamilton Companies, respectively, as shown by the license records of the Hartford-Fairmont Co., is given below. These figures do not include bottles made by these companies by hand or semi-automatic process, and we have no record of the total number of bottles made and sold by these plants. The following figures are by the gross:

	1917	1918	1919
	Gross.	*Gross.*	*Gross.*
Travis Glass Company	17,592	59,283	37,016
Essex Glass Company	14,953	57,380	87,376
Lockport Glass Company	None.	88,372	140,781
J. T. & A. Hamilton Co.	33,074	33,087	50,828

5. The total number of milk bottles manufactured and sold by Thatcher Mfg. Company in the year 1920, including its plants at Elmira, Kane, and Streator, and the plants acquired during the year 1920, was 1,008,814 gross. This includes milk bottles made for Thatcher Mfg. Company by J. T. & A. Hamilton Co., and by the American Bottle Co., at Streator, Ill.

6. The selling territory of Thatcher Mfg. Company at and prior to the years 1919 and 1920 was practically all of the States and Territories of the United States.

7. The selling territory of the Travis, Essex, and Lockport Glass Companies, and the J. T. & A. Hamilton Co., and their branches, prior to 1920 was practically all the States and Territories of the United States.

8. At the present time the selling territory of Thatcher Mfg. Company is practically all of the States and Territories of the United States.

9. The only agreement between Hartford-Fairmont Co. and Thatcher Mfg. Company, relative to granting milk bottle license by the Hartford-Fairmont Company to other and competing companies of Thatcher Mfg. Company, after the dissolution of the Travis, Essex, and Lockport Glass Companies and the Hamilton Co., is contained in section 10 of the general agreement between Hartford-Fairmont Company and Thatcher Mfg. Company, dated December 8th, 1920, of which the following is a true copy:

"SECTION 10.

"Thatcher Company sole licensee.

"The Hartford Company agrees that it will not, while not less than eleven (11) of such leased units are licensed to the Thatcher Company under outstanding licenses, issue licenses for use of any

such unit for making milk bottles within continental United States, to any person, firm, or corporation other than the Thatcher Company.

"*Provided, however*, That if, for any calendar year during the term of any license issued under this agreement, the Thatcher Company fails to pay to the Hartford Company a sum in total royalties at least equivalent to royalties, calculated at the rates set forth in section 13 hereof, upon fifty (50) per cent of the total output of milk bottles produced by the Thatcher Company for such year, whether produced with Hartford-Fairmont machinery or otherwise, then the Hartford Company may issue, for such term or terms as it may desire, a license or licenses for such machinery to licensees other than the Thatcher Company, which machinery will produce under normal circumstances, a sufficient output of milk bottles to make up such deficiency in royalties; and

"*Provided further*, That if such deficiency exists, however small, a license for at least one such unit may be so issued to an outside licensee, and said unit, and any other units so licensed to outside parties under this section, may thereafter be used to full capacity.

"Whenever by virtue of this section or any other section hereof, the Hartford Company shall have the right to issue a license or licenses to licensees other than the Thatcher Company, such licenses may, if the Hartford Company desires, be issued to a corporation or corporations subsidiary to or controlled by the Hartford Company. But, except through such issuance of such licenses, the Hartford Company shall not engage in the manufacture of milk bottles within continental United States during the term of any license issued hereunder."

10. There are no restrictive covenants between Thatcher Mfg. Company and the former owners of the Travis, Essex, and Lockport Glass Companies. The former owners of the Hamilton Co. agreed with Thatcher Mfg. Company by agreement of August 29th, 1919, as follows:

"The parties of the first part severally and not jointly, but each for himself or herself and not for each other, covenant and agree not to manufacture, produce, or sell and not to directly or indirectly engage in the business of manufacturing or selling, for a period of ten years from January 1, 1920, by any process whatsoever, glass milk bottles for sale to customers located outside of Allegheny County, Pennsylvania."

11. The only agreement between Thatcher Mfg. Company and the Owens Company relative to the use by Thatcher Mfg. Company and its manufacturing plants of both Owens Company and the Hartford-Fairmont Co., is as follows. There is no such agreement with the Hartford-Fairmont Company:

"Without the consent thereto in writing of said licensor (the Owens Company), said licensee (Thatcher Mfg. Company) will not, during the term of the license hereby granted, make any of the herein before specified bottles or jars (milk bottles) by the aid of any machine other than the machines furnished them by said licensor under this license."

The Thatcher Company claims that consent was given but this is not yet admitted by the Owens Company.

12. When the notes of Messrs. Baldwin, Libbey, and Ford, held by the Guaranty Trust Company of New York, were paid the stocks, bonds, and notes held by the Guaranty Trust Co. as collateral, were delivered to H. C. Mandeville and F. E. Baldwin, and remained in the possession of F. E. Baldwin, except the stock of the Woodbury Co. which was turned over to Thatcher Mfg. Company, and by Thatcher Mfg. Company deposited with the Guaranty Trust Company as trustees under the mortgage of Thatcher Mfg. Company, dated April 1st, 1920.

As additional information, we wish to point out that J. T. & A. Hamilton Co. are making and selling milk bottles in the county of Allegheny, Pa., and the following companies are now making milk bottles that were not making or selling milk bottles before 1920. And in addition to these all the companies Nos. 6 to 11 in the list given in answer to question No. 1 are still making and selling milk bottles:

1. Birney-Bond Glass Co., Clarion, Pa.
2. C. F. Flaccus Glass Co., Tarentum, Pa.
3. F. E. Reed Glass Co., Rochester, N. Y.
4. Saginaw Glass Co., Saginaw, Mich.
5. A Glass Co. at Los Angeles, Calif., whose name we do not know.

Out of the eleven glass companies making milk bottles before 1920, six are still making and selling milk bottles, and five glass companies are now making and selling milk bottles that did not make and sell milk bottles before 1920.

Yours very truly,

THATCHER MFG. COMPANY,
(Signed) H. C. MANDEVILLE,
Vice President.

HCM/H

COMMISSION'S EXHIBIT NO. 2.

AUGUST 28, 1921.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of condiment bottles, jam jars, and fruit-juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has, in the past, manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining and it is the intention of the company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly,

(Signed) I. T. AXTON.

COMMISSION'S FINDINGS.

(Dated June 26, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 26th day of June A. D. 1923.

Present: Victor Murdock, chairman, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket 738. Findings as to the facts and conclusions.

Pursuant to the provisions of an act of Congress approved October 15, 1914 (the Clayton Act) the Federal Trade Commission issued and served its amended complaint upon the Thatcher Manufacturing Company, a corporation, charging that the Thatcher Manufacturing Company is and has been violating the provisions of section seven of said act of Congress.

Thereupon the respondent, having entered its appearance, filed its answer to the amended complaint of the commission, and a stipulation of facts was entered into by the respondent and approved by the commission, and formal hearings were had before examiners of the commission; thereafter the whole matter regularly came on for hearing before the Federal Trade Commission upon such stipulation and the testimony, and upon the briefs and argument of counsel, and the commission having duly considered the record, and being fully advised in the premises, makes its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH ONE. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of the State of New York, with its principal office, manufacturing plant, and place of business at Elmira, New York. It has branch offices and manufacturing plants at Clarksburg and Cedar Grove, West Virginia, Mt. Vernon, Ohio, Lockport, New York, and in other States of the United States. It is engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged, and it has been so engaged since the year 1905.

PARAGRAPH TWO. The Travis Glass Company, on and prior to August 28, 1919, and until January 13, 1921, was a corporation under the laws of the State of West Virginia, with its principal office, place of business, and manufacturing plant at Clarksburg, West Virginia, with a branch plant at Cedar Grove, West Virginia. On and prior to August 28, 1919, and for some time thereafter, the

Travis Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH THREE. The Essex Glass Company, on and prior to August 28, 1919, and until December 18, 1920, was a corporation under the laws of the State of Ohio, with its principal office and place of business at Mt. Vernon, Ohio, having manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, West Virginia. On and prior to August 28, 1919, and for some time thereafter, the Essex Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FOUR. The Lockport Glass Company, on and prior to August 28, 1919, and until October 20, 1920, was a corporation under the laws of the State of New Jersey, with its principal office, place of business, and manufacturing plant at Lockport, New York. On and prior to August 28, 1919, and for some time thereafter, the Lockport Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FIVE. The Woodbury Glass Company is a corporation under the laws of the State of Indiana, with its principal office, place of business and manufacturing plant at Winchester, Indiana. On and prior to August 28, 1919, the Woodbury Glass Company was engaged in manufacturing whiskey bottles, condiment bottles, and milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. Since August 28, 1919, or shortly thereafter, the Woodbury Glass Company has been engaged in manufacturing condiment bottles, fruit juice bottles, fruit jars and like glassware, and in selling and shipping such bottles and glassware to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. On and prior to August 28, 1919, the Woodbury Glass Company was in competition with the respondent and with other persons, firms, and corporations, in the sale, transportation, and delivery of milk bottles in interstate commerce.

PARAGRAPH SIX. The J. T. & A. Hamilton Company is a corporation under the laws of the State of Pennsylvania, with its principal office, place of business and manufacturing plant at Pittsburgh, Pennsylvania. On and prior to August 28, 1919, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles, and in selling, and shipping such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH SEVEN. The Owens Bottle Company is a corporation under the laws of Ohio and was organized as The Owens Bottle-Machine Company, but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware, but does not manufacture milk bottles.

PARAGRAPH EIGHT. The Owens bottle-blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semiautomatic machines or by hand labor. The Owens bottle-blowing machine was the first, and until about the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903, the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle-blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine, and has secured and owns in its right six or more patents covering such improvements and additions.

PARAGRAPH NINE. The Owens Bottle Company has licensed and leased Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware. The manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire. The respondent still owns such exclusive rights, except that the exclusive right to said improvements and said new machines terminated October 1, 1920.

PARAGRAPH TEN. About 1916 or 1917, the Hartford-Fairmont Company of Hartford, Connecticut, produced and patented a successful bottle-making machine and a feeder therefor, and both could be operated together as a complete automatic unit. The feeder is a device for transferring molten glass from the tank into the glass molds or bottle-forming machine. The Hartford-Fairmont feeders and machines when operated together were equal, and in some respects superior, to the Owens bottle-making machines. The Owens bottle-making machines and the Hartford-Fairmont feeders and bottle-making machines are the only successful entirely automatic bottle-making machines operated as complete units.

PARAGRAPH ELEVEN. After the Hartford-Fairmont feeders and bottle-making machines had been produced and patented, the exclusive right and license to use such feeders and machines for manufacturing milk bottles were acquired by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. and A. Hamilton Company. Under such exclusive rights and

with such feeders and machines, these four companies, on and prior to August 28, 1919, were successfully manufacturing milk bottles. The Woodbury Glass Company acquired a nonexclusive license to use the Hartford-Fairmont feeders only in manufacturing condiment bottles, fruit-juice bottles, food containers, fruit jars, and glassware for carbonated soft drinks. The Woodbury Glass Company did not begin to use the Hartford-Fairmont feeders until August 28, 1919, or shortly prior thereto. Prior to using Hartford-Fairmont feeders, the Woodbury Glass Company manufactured whiskey bottles, condiment bottles, and milk bottles on semiautomatic machines, and so manufactured such bottles on and prior to August 28, 1919, and sold and delivered such bottles in commerce in competition with other persons, firms, and corporations.

PARAGRAPH TWELVE. In the year 1919 I. T. Axton, the president and a large stockholder of the Woodbury Glass Company, attempted to merge the Woodbury Glass Company with the companies which held the exclusive rights to use the Hartford-Fairmont feeders and machines for manufacturing milk bottles. He controlled the common capital stock of the Woodbury Glass Company. In May 1919, Axton secured options on the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and on the Hartford-Fairmont license, feeder and machine, and milk-bottle business of the J. T. & A. Hamilton Company and tried to merge those companies with the Woodbury Glass Company, but failed to accomplish the proposed merger.

PARAGRAPH THIRTEEN. A short time before his options expired Axton approached F. E. Baldwin, the president and largest stockholder of the respondent, and suggested that the Thatcher Manufacturing Company, or Baldwin and his associates, exercise the options and rights which Axton held. Baldwin considered the proposition and conferred with H. C. Mandeville, a director and the general counsel of the respondent, and with E. D. Libbey, the president of the Owens Bottle Company. After negotiations and interviews with the Owens Bottle Company its consent and advice to the purchase was obtained. E. D. Libbey agreed to assist in raising the necessary money, and also agreed to go into the transaction provided he could acquire the patents on the Hartford-Fairmont feeders and bottle-making machines. During August, 1919, it was decided to exercise the options and rights held by Axton.

PARAGRAPH FOURTEEN. The options held by Axton expired September 1, 1919, and the remaining option time was short. In pursuance of the decision to exercise the options and rights held by Axton, the Sterling Glass Company, Inc., was formed on August 23, 1919, to serve as a temporary means through which the desired options and rights could be acquired quickly. Mandeville incorporated the Sterling Glass Company, Inc., under the laws of New York on August 23, 1919, with an authorized capital stock of six hundred thousand dollars ($600,000), of which five hundred thousand dollars ($500,000) was issued at par for cash. One-half of the issued capital stock of the Sterling Glass Company was taken by E. D. Libbey, and the remaining one-half by the respondent. Eight shares of such stock taken by the respondent were issued in the names of four agents or employees of the respondent, but such eight shares belonged to the respondent.

PARAGRAPH FIFTEEN. On August 28, 1919, Axton, pursuant to directions, assembled the stockholders of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company at an office of the Guaranty Trust Company in New York City, New York, with their respective stock certificates ready for transfer and delivery on payment of the purchase price therefor. At the same time F. E. Baldwin, the president of the respondent, H. C. Mandeville, a director and general counsel of the respondent, E. D. Libbey, the president of the Owens Bottle Company, and William Ford, a business associate of Libbey and a large stockholder in the Owens Bottle Company, met in another room of the same building.

PARAGRAPH SIXTEEN. The sum of approximately two million one hundred and ten thousand dollars ($2,110,000) in cash was required to exercise the options and rights held by Axton, and the Sterling Glass Company had five hundred thousand dollars ($500,000) of that amount. To obtain the required balance, F. E. Baldwin, E. D. Libbey, and William Ford, on behalf of the Sterling Glass Company, discounted to the Guaranty Trust Company their three separate individual promissory notes for a total of one million, six hundred ten thousand dollars ($1,610,000), and each indorsed the notes of the other two so that all were equally liable on all three notes. Such notes were dated and discounted August 28, 1919, and were payable on demand, but the Guaranty Trust Company agreed to carry the notes for one year. The proceeds of said notes and the five hundred thousand dollars ($500,000) of the Sterling Glass Company were deposited in the Guaranty Trust Company to the credit of the Sterling Glass Company, and used, on August 28, 1919, to acquire the capital stock of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, also the common capital stock of the Woodbury Glass Company, and the license, machine, and milk-bottle business of the J. T. and A. Hamilton Company. The certificates of stock in the Essex, Travis, Lockport, and Woodbury companies were indorsed in blank by the respective vendors and retained by the Guaranty Trust Company as collateral security for the three notes of Baldwin, Libbey, and Ford. The transaction with the J. T. and A. Hamilton Company ran directly to the respondent, the J. T. and A. Hamilton Company transferring its Hartford-Fairmont license and machine and its milk-bottle business outside of Allegheny County, Pennsylvania, directly to the respondent.

PARAGRAPH SEVENTEEN. During the progress of said transaction at the Guaranty Trust Company, but before the capital stock of the Essex, Travis, Lockport, and Woodbury companies had been acquired as stated in these findings, I. T. Axton wrote and delivered the following letter:

AUGUST 28, 1919.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of con-

diment bottles, jam jars, and fruit-juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has in the past manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the Company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly,

I. T. AXTON.

PARAGRAPH EIGHTEEN. Immediately after the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as aforesaid, F. E. Baldwin, the president of the respondent, appeared before the vendors of the stock and requested the officers of said four companies to remain in their respective positions and continue the operation of the companies until further directions. The resignations of all officers of the four companies were taken by Baldwin to be exercised at his option. The respondent conducted these four companies under their own management until January 1, 1920, when the respondent brought the entire business of said four companies to Elmira, New York, and thereafter such companies were managed and directed by the Thatcher Manufacturing Company.

PARAGRAPH NINETEEN. After the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as stated in these findings, Baldwin, Libbey, Ford, and the Sterling Glass Company entered into the following agreement:

"Agreement made this 28th day of August, 1919, between Francis E. Baldwin, of the first part, William Ford, of the second part, Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., hereinafter called 'Sterling Company,' of the fourth part.

"Witnesseth:

"Whereas, Baldwin, Ford, and Libbey are each making certain notes to the Guaranty Trust Company as follows:

"Baldwin is making a note for six hundred fifty thousand dollars ($650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said companies;

"Libbey is making a note of four hundred eighty thousand dollars ($480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and

"Ford is making a note for four hundred eighty thousand dollars ($480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with eighty-nine thousand dollars ($89,000) par value of bonds and one hundred seventeen thousand dollars ($117,000) of

notes of said company; all of said notes being given on demand and amounting in all to one million six hundred ten thousand dollars ($1,610,000); and

"Whereas the Sterling Company is a corporation organized under the laws of the State of New York, with an authorized capital stock of six hundred thousand dollars ($600,000), of which five hundred thousand dollars ($500,000) has been paid in cash, and Libbey and Baldwin have each contributed one-half (½) of said capital stock; and

"Whereas Libbey, Baldwin, and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

"Whereas it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others, and

"Whereas Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called 'Hartford-Fairmont' patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

"Whereas it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the company and the details in respect thereto, Ford and Libbey may retire from Sterling Company and from this transaction, at their option, and shall in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the two hundred fifty thousand dollars ($250,000) or other amounts contributed to the capital stock of Sterling Company; and

"Whereas Sterling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

"Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of one dollar ($1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

"First. That Sterling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them, harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and, upon the payment of the said note all of the collateral thereto shall become the property of Sterling Company.

"Second. That until the formation of the permanent company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

"Third. That if the so-called 'Hartford-Fairmont' patents, or control thereof, shall not be acquired by Libbey within six months

of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization, or organization of the permanent company hereinbefore referred to, Libbey may, at any time upon service of ten (10) days written notice, upon Baldwin, retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the two hundred fifty thousand dollars ($250,000) aforesaid, invested by Libbey in the capital stock of Sterling Company, and all other amounts which Libbey may have so invested or advanced to Sterling Company, with interest on each such investment and advance from the date thereof, at the rate of six per cent (6%) per annum.

"Fourth. Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Sterling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

"Fifth. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the first, second, and third parties, and the successors and assigns of the fourth party.

"Sixth. This agreement supersedes and terminates an agreement made between Baldwin, Ford, and Sterling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, secretary.

"In witness whereof, the parties have set their hands the day and year first above written.

"F. E. BALDWIN.
"E. D. LIBBEY.
"WILLIAM FORD.
"STERLING GLASS COMPANY, INC.,
"By H. C. MANDEVILLE,
"*President.*"

PARAGRAPH TWENTY. Some little time after August 28, 1919, and before December 11, 1919, it was determined that Libbey could not acquire the Hartford-Fairmont interests, and Libbey abandoned that idea. Separate written notices, dated December 11, 1919, were given by Libbey and Ford to Baldwin and the respondent stating that, as the plan of reorganization of the companies purchased under the agreement of August 28, 1919, did not meet their approval, they desired to retire from the agreement and to be relieved from further liability under the notes given to the Guaranty Trust Company.

Libbey's notice also stated that he expected to be reimbursed for the money advanced for the capital stock of the Sterling Glass Company, all to be accomplished not later than April 12, 1920. Libbey was not immediately paid for his investment in the Sterling Glass Company, nor were Libbey and Ford released from liability within the time and manner provided in the third paragraph of said agreement of August 28, 1919, and by the date stated in Libbey's notice. The indebtedness and notes to the Guaranty Trust Company remained unchanged until paid by the respondent on July 3, 1920. Libbey and Ford did not appear in the transaction subsequent to December 11, 1919, except that Libbey's stock in the Sterling Glass Company was transferred of record to the respondent on June 5, 1920, and on June 7, 1920, the respondent paid Libbey two hundred sixty-one thousand, seven hundred fifty dollars ($261,750) for such stock.

PARAGRAPH TWENTY-ONE. On or about December 1, 1919, prior to the date of the notices from Libbey and Ford, the certificates of stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the Woodbury Glass Company, acquired on August 28, 1919, were transmitted by the Guaranty Trust Company to its agent at Elmira, New York, and there formally transferred on the records of said companies. Such certificates were cancelled, and new certificates for all the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and for all the common capital stock of the Woodbury Glass Company, were issued to persons nominated by Baldwin. All such stock in said companies, except two or three shares in each company issued to other persons to qualify the requisite directors, was issued to the following named persons:

F. E. Baldwin, president of the respondent,
H. C. Mandeville, a director and general counsel of the respondent,
R. W. Niver, vice president and a director of the respondent, and
F. L. Collins, a confidential employee of the respondent.

F. E. Baldwin and F. L. Collins were elected president and secretary, respectively, of said Essex, Travis, Lockport, and Woodbury companies.

PARAGRAPH TWENTY-TWO. On December 5, 1919, all the stock of the Travis Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

On December 6, 1919, all the stock of the Lockport Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville.

On December 8, 1919, all the capital stock of the Essex Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. L. Collins.

On December 8, 1919, all the common capital stock of the Woodbury Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

None of the persons to whom such stock was so issued paid any money for such stock or gave any consideration therefor. The certificates so issued were not delivered to such persons, but were severally indorsed in blank by the respective persons to whom issued, and returned to the Guaranty Trust Company, at New York City, and held as collateral security for the said notes of Baldwin, Libbey, and Ford until such notes were finally paid.

PARAGRAPH TWENTY-THREE. During the month of September, 1919, the respondent advanced forty thousand, six hundred five dollars ($40,605) to the Woodbury Glass Company, and during the month of October, 1919, the respondent advanced twenty-five thousand dollars ($25,000) to the Travis Glass Company. On December 31, 1919, the respondent received seventy-five thousand dollars ($75,000) from the Essex Glass Company, and that sum was mingled with and became a part of the funds and assets of the respondent. Such advances were not made in payment of any indebtedness whatever.

PARAGRAPH TWENTY-FOUR. The annual report for 1919 of F. E. Baldwin, as president of the respondent, was made to the stockholders and directors of the respondent on February 18, 1920, and in that report Baldwin formally related the acquisition of the capital stock of the Essex, Travis, Lockport, and Woodbury companies in the following language:

"During the year starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont feeder and milk-bottle machine and milk-bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company, held the exclusive licenses for the Hartford-Fairmont feeder and the machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies, and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and the machines and the milk-bottle business of the J. T. and A. Hamilton Company.

"The money was borrowed for the making of these purchases of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, President of the Owens Bottle Company, and Mr. William Ford, a large stockholder in the Owens Bottle Company.

"We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by the Thatcher Manufacturing Company.

"The opportunity to purchase these plants, I can not help but feel, was providential. It puts us in the forefront as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmont machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines."

PARAGRAPH TWENTY-FIVE. On and prior to August 28, 1919, the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company sold milk bottles in commerce in competition with each other and in competition with the Thatcher Manufacturing Company in substantially all the States and Territories of the United States. There has been no competition between the respondent and the Woodbury Glass Company since August 28, 1919. All competition between the respondent and the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies.

PARAGRAPH TWENTY-SIX. During the month of June, 1919, the Woodbury Glass Company sold and shipped milk bottles in carload lots to purchasers in the State of Illinois. On the 8th day of April, 1919, the Illinois Glass Company of Chicago, Illinois, gave an order to the Woodbury Glass Company for one carload of 200 gross, quart, private mould, Wisconsin sealed milk bottles, to be shipped on May 3, 1919, and said order contained the following instruction:

"The above car is to be followed with an additional car of quarts to be shipped the first day of each month on account of this contract until notified to discontinue."

It does not appear that such order or instruction was ever changed or discontinued.

PARAGRAPH TWENTY-SEVEN. In order to finance the indebtedness to the Guaranty Trust Company under the three notes given by Baldwin, Libbey, and Ford, an agreement was made on April 10, 1920, by Baldwin with Hemphill, Noyes & Company and Bonbright & Company, bond buyers of New York City, providing a plan for a reorganization of the respondent by increasing its capital stock from one million dollars ($1,000,000) to one million, six hundred twenty-five thousand dollars ($1,625,000), and also by issuing two million dollars ($2,000,000) of its bonds to be purchased by such bond buyers. That agreement recited that Baldwin represented a control of at least two-thirds or more of both the outstanding common and preferred stock of the respondent for the purpose of carrying out the plan therein set forth. In the agreement Baldwin is called the "seller"; Hemphill, Noyes & Company and Bonbright & Company are called the "buyers"; and the respondent is referred to as the "corporation." Paragraph IV of that agreement is as follows:

"IV.

"Either before or at the time of the reorganization, as herein provided, the corporation shall acquire all of the assets and the business of the following companies, to wit: Travis Glass Company, Essex Glass Company, and the Lockport Glass Company, all of the shares of stock of said companies being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation; and at the same time, the corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Sterling Glass Company. As a condition of such acquisition, the corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved."

PARAGRAPH TWENTY-EIGHT. The agreement of April 10, 1920, also provided that the bonds to be issued by the respondent should be secured by a mortgage or deed of trust, and among the provisions pertaining thereto are the following excerpts from Paragraph V of such agreement:

"V.

"Immediately upon the filing of the certificate of reorganization of the corporation as provided by law the seller shall cause the corporation to authorize, make, and execute an issue of $2,000,000, principal amount of its corporate bonds (hereinafter called the 'bonds'). The said issue of bonds shall be limited to $2,000,000, principal amount thereof; shall be matured ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semi-annually; * * *

* * * * * * *

"Should the buyers notify the seller that they will purchase the securities of the corporation as hereinbefore provided, and should the buyers contemporaneously therewith notify the seller that it is their desire to have the bonds secured by mortgage on the property of the corporation and the properties of the Travis Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the seller shall cause the corporation to execute a mortgage on all of its property and that of said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of principal and interest of the bonds: * * *

* * * * * * *

"The seller agrees that the following representations constitute a part of this agreement and are the basis upon which the sale hereinafter provided for is to be made:

"A. * * *

"B. * * *

"C. That the corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumberances with the exception of the lien or aforesaid mortgage of $149,500 on a portion of the property of the corporation.

"D. That the business of the corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that tht prospects for continued profitable business are good."

PARAGRAPH TWENTY-NINE. The reorganization of the respondent was carried out in accordance with the agreement of April 10, 1920, between Baldwin and the bond buyers. Two days after such agreement, viz, on April 12, 1920, the stockholders of the Thatcher Manufacturing Company authorized an increase in the capital stock of the respondent as stipulated in the agreement. Such additional stock was issued for cash, and from the proceeds thereof the respondent, on June 7, 1920, paid Libbey two hundred sixty-one

thousand, seven hundred fifty dollars ($261,750) for the sum Libbey advanced for the capital stock of the Sterling Glass Company with interest thereon. The stock in Libbey's name was transferred of record to the respondent on June 5, 1920, and thereupon the respondent became the owner of record of all the capital stock of the Sterling Glass Company, except the eight (8) shares issued in the names of agents or employees of the respondent.

PARAGRAPH THIRTY. On June 3, 1920, before the stock in Libbey's name was transferred of record or paid for by the respondent, the following communication was given to the Sterling Glass Company, and its board of directors:

JUNE 3, 1920.

STERLING GLASS CO., INC., AND THE
BOARD OF DIRECTORS THEREOF.

DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all the debts and obligations of Sterling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY,
By F. E. BALDWIN, *Pres.*,
H. C. MANDEVILLE,
ELY W. PERSONIUS,
LEO WAXMAN,
W. P. RODGERS.

PARAGRAPH THIRTY-ONE. The Sterling Glass Company, on June 7, 1920, by H. C. Mandeville, its president, executed a bill of sale by which all property and assets of the Sterling Glass Company of

every kind and description, including the agreement of August 28, 1919, with all rights and interest therein, were transferred to the respondent.

Assignments or transfers dated as of June 1, 1920, of the rights and licenses to use the Hartford-Fairmont feeders and machines were executed and delivered to the respondent by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the J. T. & A. Hamilton Company. The Hartford-Fairmont Company assented and agreed to the transfer and assignment of such rights and licenses to the respondent.

PARAGRAPH THIRTY-TWO. Pursuant to the condition expressed in paragraph four of the contract of April 10, 1920, for the acquisition of the assets of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, and for a dissolution of said companies, separate written notices were addressed to the Essex, Travis and Lockport companies, and the respective boards of directors thereof, by Baldwin, Mandeville, Collins and Niver and the persons holding one share each of stock in such companies, and all such notices are dated June 7, 1920. It was recited in each notice that the persons whose names were signed thereto had acquired all the capital stock of the company named, and desired to have such company dissolved, and in anticipation of such dissolution to have all the properties and assets of such company as a going concern transferred to said persons or their nominee. Each company was requested to cause all the assets and property of such company to be transferred to said persons or their nominee. Resolutions providing for such transfer and dissolution were thereupon adopted by such persons as the stockholders and directors of the Essex, Travis and Lockport companies, respectively. In each case the respondent was nominated as the transferee for the property of such companies. Deeds and bills of sale were severally drawn and executed by each company purporting to transfer and convey to the Thatcher Manufacturing Company all property and assets of every kind belonging to the Essex, Travis and Lockport companies, respectively. Such deeds and bills of sale were executed and ready for delivery, and were executed by each company by F. E. Baldwin as president, and attested by F. L. Collins as secretary, respectively. The deeds and bills of sale from the Essex Glass Company were dated June 17, 1920. The deeds and bills of sale from the Travis Glass Company and the Lockport Glass Company were dated June 25, 1920. Each deed and bill of sale recited a consideration of one dollar and other good and valuable considerations.

PARAGRAPH THIRTY-THREE. In pursuance of the agreement of April 10, 1920, between Baldwin and the bond buyers, to accomplish the issue of bonds provided for therein, the respondent executed a mortgage or deed of trust to the Guaranty Trust Company, as trustee, to secure the payment of said bonds. Such mortgage or deed of trust included all properties of the respondent, also all properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company. The bonds to be issued and sold and to be secured by such mortgage or deed of trust were drawn and signed, and dated April 1, 1920.

PARAGRAPH THIRTY-FOUR. On July 3, 1920, Baldwin and Mandeville, representing the respondent, met the representatives of the bond buyers at the offices of the Guaranty Trust Company in New York City, New York. The bonds and the mortgage or deed of the respondent, and also the deeds and bills of sale from the Essex, Travis and Lockport companies were produced and delivered to the bond buyers. Such deeds and bills of sale, bonds, and mortgage or deed of trust became effective on such delivery. The bond buyers delivered the proceeds of the bonds to the Guaranty Trust Company, and such proceeds were deposited therein to the credit of the Thatcher Manufacturing Company. The respondent, by Baldwin as its president, drew a check on the fund arising from the proceeds of such bonds, in favor of the Guaranty Trust Company for $1,634,955, for payment of the three notes of Baldwin, Libbey and Ford with the interest thereon. The Guaranty Trust Company accepted the payment, marked such notes paid, and delivered said notes and the certificates of stock of the Essex, Travis and Lockport companies to Baldwin and Mandeville. The certificates for the common stock of the Woodbury Glass Company were retained by the Guaranty Trust Company under the terms of said mortgage or deed of trust. The mortgage or deed of trust, and the deeds to the respondent from the Essex, Travis, and Lockport companies were placed of record by the bond buyers and the trustee. The delivery of the deeds and bills of sale, bonds, and proceeds, mortgage or deed of trust, notes and certificates of stock, and the payment of said notes occurred contemporaneously and constituted one transaction.

PARAGRAPH THIRTY-FIVE. The dissolution of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the Sterling Glass Company was accomplished pursuant to the condition expressed in paragraph four of the agreement of April 10, 1920, and in compliance with the notices, requests and resolutions of the stockholders and directors of said companies as heretofore stated in these findings.

The Sterling Glass Company was dissolved September 9, 1920;
The Lockport Glass Company was dissolved October 20, 1920;
The Essex Glass Company was dissolved December 18, 1920; and
The Travis Glass Company was dissolved January 13, 1921.

PARAGRAPH THIRTY-SIX. It was admitted that the respondent acquired and now owns the common capital stock of the Woodbury Glass Company. The respondent acquired that stock through the transaction in the Guaranty Trust Company on August 28, 1919, and subsequent proceedings stated in these findings, and the capital stock of the Essex, Travis, and Lockport companies was included in the same transaction. All the common capital stock of the Woodbury Glass Company now appears of record in the names of the persons to whom such stock was issued on December 8, 1919, and January 5, 1920, as stated in paragraph twenty-two of these findings. The persons to whom the common capital stock of the Woodbury Glass Company was issued on December 8, 1919, and January 5, 1920, and in whose names such stock remains of record, claim no right, title or interest in or to such stock adverse to the right, title and interest of the respondent. All the common capital stock of the Woodbury

Glass Company is the property of the Thatcher Manufacturing Company.

PARAGRAPH THIRTY-SEVEN. The Woodbury Glass Company began manufacturing milk bottles about 1914 or 1915, and made and sold milk bottles every year thereafter until it ceased manufacturing milk bottles in 1919, and during all that time the Woodbury Glass Company was equipped for manufacturing milk bottles, and made and sold milk bottles whenever it was so disposed. Milk bottles manufactured by the Woodbury Glass Company were sold over the United States generally. On and prior to August 28, 1919, the Woodbury Glass Company had contracts outstanding for the sale and delivery of milk bottles in commerce, and subsequent to August 28, 1919, orders to the Woodbury Glass Company for milk bottles, and such outstanding contracts, were filled and completed by the Thatcher Manufacturing Company. Since August 28, 1919, the Woodbury Glass Company has not manufactured milk bottles, and there has been no competition between the Woodbury Glass Company and the respondent since that date.

PARAGRAPH THIRTY-EIGHT. The production of milk bottles was not the principal business of the Woodbury Glass Company during the years 1918 and 1919. The Woodbury Glass Company produced about thirty-four thousand (34,000) gross milk bottles in 1918, and about eight thousand (8,000) gross milk bottles in 1919 prior to August 28th. The total production of glass bottles of all kinds by the Woodbury Glass Company in 1918 was about two hundred thousand (200,000) gross, and its total production of glass bottles of all kinds during 1919 was about one hundred forty thousand (140,000) gross.

PARAGRAPH THIRTY-NINE. The total number of milk bottles produced and sold during the years 1918 and 1919 by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company is stated below. Such figures are by the gross, and do not include bottles made by the Essex, Travis, Lockport, and Hamilton companies by hand or by semiautomatic process, but only milk bottles made by said companies on Hartford-Fairmont machines. The figures below of 8,000 gross, giving the output of the Woodbury Glass Company for 1919, show the number of milk bottles produced by that company in 1919 prior to August 28.

	1918.	1919.
Essex Glass Company	57,380 gross.	87,376 gross.
Travis Glass Company	59,283 gross.	37,016 gross.
Lockport Glass Company	88,372 gross.	140,781 gross.
J. T. & A. Hamilton Company	33,087 gross.	50,828 gross.
Woodbury Glass Company	34,000 gross.	8,000 gross.

PARAGRAPH FORTY. The Thatcher Manufacturing Company is the largest producer of milk bottles in the United States, and produced and sold milk bottles during 1918 and subsequent years in the following amounts:

1918	331,055 gross.
1919	288,713 gross.
1920	833,870 gross.
1921	821,750 gross.

In the year 1919 prior to the acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport

Glass Company and the common capital stock of the Woodbury Glass Company, the respondent produced and sold in commerce about forty per cent (40%) of all the milk bottles manufactured in the United States. During the year 1920 the respondent produced and sold in commerce about seventy per cent (70%) of all the milk bottles manufactured in the United States. On April 23, 1920, Baldwin submitted certain information to the bond buyers in connection with the proposed bond issue of the Thatcher Manufacturing Company, and made the following statement:

"The Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful bottle-making machines devised, and will manufacture and sell about 90% of all the milk bottles manufactured in the United States."

PARAGRAPH FORTY-ONE. The contract of April 10, 1920, between Baldwin and the bond buyers provided that the bonds to be issued thereunder might be called on the terms and conditions and at the premium therein named. The bonds which the respondent issued under that contract have been called and retired, and the mortgage or deed of trust securing such bonds has been cancelled. The respondent now holds its properties and the properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company free of the lien or incumbrance of such mortgage or deed of trust.

PARAGRAPH FORTY-TWO. The acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and the subsequent developments and transactions stated in these findings, constituted an acquisition by the Thatcher Manufacturing Company of the stock or share capital of said four companies within the purview and in violation of an act of Congress approved October 15, 1914 (the Clayton Act), and especially of section 7 thereof. The transfer and conveyance to the respondent of the assets, rights, and properties of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Sterling Glass Company, and the dissolution of said companies, was an artifice and subterfuge of the respondent to evade the provisions of said act of Congress and to escape the penalties thereof. By such acquisition, artifice and subterfuge the respondent secured, and now retains and enjoys, the fruits, benefits, and advantages of an illegal acquisition of the stock or share capital of competing corporations engaged in commerce.

PARAGRAPH FORTY-THREE. The effect of the acquisition by the respondent of the said stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, as stated in these findings, was:

(a) to eliminate all competition in commerce in the milk bottle business between the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the Thatcher Manufacturing Company, and also between each company and each other of said companies;

(b) to restrain commerce in the milk bottle business in the sections or communities of the United States in which the Essex Glass Com-

pany, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the Thatcher Manufacturing Company were engaged in commerce on and prior to August 28, 1919; and

(c) to tend to create a monopoly in commerce in the milk bottle business in the Thatcher Manufacturing Company.

CONCLUSION.

The acquisition by the respondent of the stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, as stated in the foregoing findings as to the facts, constituted a violation of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially of section 7 thereof.

By the commission:

[SEAL.] (Signed) VICTOR MURDOCK,
Chairman.

Dated this 26th day of June, A. D. 1923.

Attest:

(Signed) OTIS B. JOHNSON,
Secretary.

COMMISSION'S ORDER TO CEASE AND DESIST.

(Dated June 26, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 26th day of June, A. D. 1923.

Present: Victor Murdock, chairman, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order to cease and desist.

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, on the answer of the respondent thereto, on a written stipulation of facts entered into by the respondent and approved by the commission, on the testimony and evidence on file, and on the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing in which it stated its findings as to the facts with its conclusion that the respondent is and has been violating the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as shown in such findings as to the facts which are adopted and made a part hereof.

Therefore, it is ordered that the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management and control of the assets, plants, properties, rights and privileges which were at the time of their acquisition in the ownership, possession, management and control of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, together with all improvements and additions made to such assets, plants and properties up to the date of this order, which are hereby declared to have been acquired and are now held in violation of law or as a result thereof; and

2. Divest itself of all capital stock of the Woodbury Glass Company now held and owned by it, and all right, title, interest and claim therein, which said stock is hereby declared to have been acquired and is now held in violation of law or as a result thereof; and

3. Submit within three months from the date of this order, for approval by the commission, a plan for the performance by the respondent of the terms of this order, jurisdiction for this purpose being hereby retained.

By the commission: Commissioner Murdock dissenting to the form of the third paragraph of the order for the reason that the order in all respects should be definitive.

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

ORDER FOR HEARING ON PROPOSED MODIFIED ORDER.

(Dated November 1, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 1st day of November, A. D. 1923.

Present: Victor Murdock, chairman; John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket 738. Order for hearing on proposed modified order.

It appearing to the Federal Trade Commission that the order issued herein on June 26, 1923, should be modified, and that the Thatcher Manufacturing Company should be notified of the proposal to modify said order and of the day for hearing the same and any objections that may be made thereto;

It is therefore ordered that the proposed modification of the order of June 26, 1923, be set for hearing before the Federal Trade Commission at its office in Washington, D. C., on the 14th day of November, 1923, at 2 o'clock p. m., and that notice of such hearing and a copy of the proposed modified order be served on the Thatcher Manufacturing Company and its attorneys by registered mail.

It is further ordered that the Thatcher Manufacturing Company may appear at the time and place herein fixed and object to the modification of said order and show cause why said order should not be modified, if it so desire.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

REQUEST FOR GREATER CERTAINTY IN PROPOSED MODIFIED ORDER.

(Filed November 14, 1923.)

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Request for greater certainty in the proposed modified order.

A copy of the proposed modified order issued November 1, 1923, having been received by the respondent, together with notice of a hearing on said order, all in the above entitled case, and the respondent being uncertain as to the meaning and effect of such proposed order, the respondent, therefore, respectfully submits herewith its request for greater certainty therein and especially as to the particular points and questions set forth below. Under said order, the respondent is directed: First, to prepare within three months and submit for the approval of the commission a plan for the performance of the terms of the order, and, second, to do and to cease to do certain things as set forth more particularly in said order.

In order either to prepared said plan or to carry out other directions of said order, it is necessary that the respondent shall have more exact information as to said order.

(1) Paragraph 1 of said proposed order directs that the respondent "cease and desist from the ownership, operation, management, and control of the assets, plants, properties, rights, and privileges which were at the time of their acquisition in the ownership, possession, management, and control of the Essex Glass Company," etc.

The assets thus ordered to be divested are above defined as those which were in the possession of the Essex and other companies "at the time of their acquisition." Those assets, during the entire period of the transactions in question, were changing daily in amount and character. Therefore, in order to comply with said order, it is necessary for the respondent to be informed as to the particular date which shall be applied as being "the time of their acquisition."

(2) The said paragraph 1, furthermore, also directs the divesting by the respondent of "all improvements and additions made to such assets," etc.

The respondent alleges that it has, out of its own funds and at its own expense, made large additions to the assets and especially to the plant equipment of the Essex, Travis, and Lockport companies during the period between August 28, 1919, and November 1, 1923, the date of the issuance of said proposed order. It therefore desires to be informed more exactly whether it is required by this order to

surrender additions and improvements upon these assets which have been so fully paid for out of the funds of the respondent's company.

(3) A further question is raised in regard to said paragraph 1 as to the exact definition of such improvements and additions by the last clause in said paragraph, which is as follows: "which are hereby declared to have been acquired and are now held in violation of law or as a result thereof." The respondent necessarily desires information as to the meaning and effect of the language just above quoted. Is this language a separate and independent, positive declaration of fact? Or, on the other hand, is it intended to modify the preceding language and to provide that only such additions and improvements shall be divested as "have been acquired and are now held in violation of law"?

And if such quoted clause is intended so to modify the preceding language and to define and restrict the additions and improvements which are to be divested, it is then further necessary that the respondent be more exactly informed as to which additions and improvements are thus declared to have been acquired in violation of law.

(4) It is necessary that the respondent be more exactly informed as to the meaning and effect of paragraph 2 of said order. After careful comparison of paragraph 2 with paragraph 1, the respondent is of the belief that all of the positive and specific action which is required of the said respondent by paragraph 2 is also fully and completely required in paragraph 1 and that the only difference between paragraph 1 and paragraph 2 is that the latter paragraph sets forth the purpose and desired result of the specific action thus ordered and that paragraph 2 is, therefore, unnecessary and superfluous.

The respondent, however, being in natural doubt as to such a conclusion, requests that it be informed as to whether there is any action required of the respondent by paragraph 2 other than or in addition to the action required by paragraph 1.

The respondent, however, further observes that in paragraph 2, the date of August 28, 1919, appears to be used as a dividing line or time applied to and defining certain rights, privileges, and assets and that in this respect paragraph 2 introduces a new element not existing in paragraph 1. The respondent, therefore, necessarily requests to be informed as to the meaning and effect of the use of said date of August 28, 1919, in the said paragraph 2 in connection with the action therein directed.

(5) As to paragraph 3, the respondent makes the same observations as set forth immediately above as to paragraph 2 and requests the same information.

(6) As to paragraph 4, the respondent makes the same observations and requests the same information as set forth above in regard to paragraph 2; that is to say, the respondent, after careful comparison of paragraphs 2, 3 and 4 with paragraph 1, believes that all the positive action required of the respondent by said paragraphs 2, 3, and 4 is fully and completely covered by the action required by paragraph 1, and therefore, concludes that paragraphs 2, 3, and 4 are superfluous; and being in natural doubt as to this conclusion, the respondent necessarily should be informed as to whether there is any action required of the respondent by paragraphs 2, 3, and 4 which is not fully and completely covered by paragraph 1.

(7) As to paragraph 5, the respondent necessarily requires to be informed as to the meaning and effect of the last clause thereof which provides "which said stock or share capital is hereby declared to have been acquired and is now held in violation of law or as a result thereof." The question here confronting the respondent is the same in principle as that raised by paragraph (3) of this request above set forth, namely, Is this clause simply a positive statement of fact? Or is it intended, on the other hand, to qualify the language immediately preceding and to act as a definition of the stock which is ordered to be divested; and if so, what is the meaning and effect of such qualification?

Dated November 14, 1923.

THATCHER MANUFACTURING COMPANY,
Respondent.

By HERBERT KNOX SMITH, *Its Attorney.*

ORDER FOR HEARING ON SECOND PROPOSED MODIFIED ORDER.

(Dated November 17, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 17th day of November, A. D. 1923.

Present: Victor Murdock, chairman; John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order for hearing on second proposed modified order.

It appearing to the Federal Trade Commission that the order issued herein on June 26, 1923, should be modified, and that the Thatcher Manufacturing Company should be notified of the second proposal to modify said order and the date for hearing the same and any objections that may be made thereto:

It is ordered that the second proposed modification of said order of June 26, 1923, be set for hearing before the Federal Trade Commission at its office in Washington, D. C., on Friday, the 14th day of December, 1923, at 2 o'clock p. m., and that notice of such hearing and a copy of the second proposed modified order be served on the Thatcher Manufacturing Company and its attorneys by registered mail.

It is further ordered that the Thatcher Manufacturing Company may appear at the time and place herein fixed and object to the modification of said order and show cause why said order should not be modified if it so desire.

By the Commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

REQUEST FOR GREATER CERTAINTY IN SECOND PROPOSED MODIFIED ORDER.

(Filed December 5, 1923.)

HARTFORD-EMPIRE COMPANY,
Hartford, Conn., December 4, 1923.

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: In the matter of the Thatcher Manufacturing Company, Docket No. 738, I acknowledge receipt of a copy of the second proposed modified order to cease and desist, dated November 17, 1923, together with notice that a hearing on the same would be held at 2.00 p. m., December 14, 1923, at Washington.

I respectfully move that the respondent's request for greater certainty, dated November 14, 1923, directed at the first proposed modified order in the above-entitled case and argued before the commission on that date, be applied in principle to the said second proposed order of November 17th and the objections which are raised in said request be considered by the commission, so far as applicable, in arriving at a decision on the said second proposed order.

It is not desired to burden this record with unnecessary repetition and it is, therefore, felt by the Respondent that it is sufficient, in connection with the said Second Order, to call the attention of the commission to the objections raised to the First Order and particularly to the general principle underlying said request. That principle is, that whatever order shall ultimately be adopted, it is necessary that "the respondent" be informed as to the particular date which shall be applied as being the time of their acquisition," that is to say, the time or date upon which the assets and stocks involved in the said case are held to have been acquired.

The reasons for making this request have been sufficiently set forth in said request and in the oral argument of November 14th.

Having thus raised and brought to the attention of the commission the same questions in principle and objections to the second proposed order as were raised in the case of the first proposed modified order, and having thus made the respondent's objections to the second proposed order a part of the record, the respondent does not feel that it is necessary to burden the commission with any further oral argument thereon, and its counsel will not appear at the hearing on December 14, 1923.

Respectfully yours,

THATCHER MANUFACTURING COMPANY,
By (signed) HERBERT KNOX SMITH, *Its Counsel.*

HKS/LES.

COMMISSION'S MODIFIED ORDER TO CEASE AND DESIST AND DIVEST.

(Dated December 31, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 31st day of December, A. D. 1923.

Present: Huston Thompson, chairman; Vernon W. Van Fleet, Nelson B. Gaskill, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION *v.* THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order to cease and desist and divest, etc. (modified).

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, the answer of the respondent thereto, a written stipulation of facts entered into by the respondent and approved by the commission, the testimony and evidence on file, and the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts with its conclusion that the Thatcher Manufacturing Company is and has been violating the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially section 7 thereof.

It is therefore ordered that the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management, and control of the assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and cease and desist from the ownership, operation, management, and control of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions, with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

2. Divest itself of all assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass

Company and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and divest itself of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

3. Divest itself of all the stock or share capital of the Woodbury Glass Company now held and owned directly or indirectly by the Thatcher Manufacturing Company, together with all right, title, interest, and claim in and to such stock or share capital, which said stock or share capital is hereby declared to have been acquired, and is now held by the Thatcher Manufacturing Company in violation of law or as a result thereof.

4. Submit within thirty (30) days from the date of this order, for approval by the Federal Trade Commission, a plan for the performance by the Thatcher Manufacturing Company of the terms of this order, jurisdiction for this purpose being hereby retained.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

RESPONDENT'S ANSWER TO MODIFIED ORDER.

(Filed February 4, 1924.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket 738. Respondent's answer to order of Federal Trade Commission of December 31, 1923.

The respondent, the Thatcher Manufacturing Company, having received the findings as to the facts and conclusion of the Federal Trade Commission, in the above-entitled cause, dated June 26, 1923, together with the modified order of December 31, 1923, respectively makes answer thereto as follows:

(1) In the opinion and belief of the respondent, the said findings of facts and also said modified order, in so far as the same find that the respondent acquired the capital stocks of either the Essex, Travis, Lockport, or Woodbury Glass Companies or any part thereof in violation of law, are not supported by the testimony in the said cause.

(2) In the opinion and belief of the respondent the said conclusion, in so far as the same sets forth that the respondent acquired said stocks or any of them in violation of law is not supported by the said testimony.

(3) The respondent does not hold or own or in any way possess or control any of the said stock of Essex, Lockport, or Travis Glass Companies. Said companies having all been dissolved before the commencement of these proceedings, the respondent, if it ever acquired the said stocks or any of them (which acquisition it denies) has long since been divested of all of said stocks, inasmuch as said stocks ceased to exist upon the respective dissolution of said companies.

(4) So much of said order to cease and desist as relates to the ownership, operation, management, and control of the assets, properties, rights, and privileges belonging or in any way pertaining to the Essex, Lockport, or Travis Glass Companies, or any one of them, or to any other company, or as relates to any improvements or additions thereto, is, in the opinion of the respondent, an order which goes beyond the jurisdiction and power of the Federal Trade Commission.

(5) The respondent, holding with all due respect, the beliefs and opinions above set forth, desires that the issue thus raised may be determined by final judicial action, in the usual course provided by law. The respondent therefore respectfully represents that it would be inexpedient for it to submit a plan for the performance of said order, as set forth in paragraph 3 of said order, prior to such final judicial determination of said issues because:

(a) The formulation and submission of such a plan would tend to prejudice the position of the respondent in the further trial of said issues.

(b) The attempt to apply and carry out such a plan, or to perform such order, prior to such final judicial determination, would necessarily result in such irrevocable changes and disturbances of property rights as would bring about damage which, in the event that such issues are finally determined in favor of the respondent, would be wholly irreparable and unjust under such circumstances.

(6) The respondent further observes:

(a) That the transactions in question and as set forth in the said findings and conclusion, covered a period at least from August 28, 1919, to July 3, 1920, or more than ten months, during all of which time said assets were constantly changing in quantity and identity.

(b) That the respondent denies that any acquisition by it, as charged, of the stocks of the Essex, Lockport, Travis, or Woodbury companies ever took place.

(c) That although, by said order, the respondent is required so to cease and desist and divest itself as to the stated assets, and so to restore a previous condition of affairs, all as of the date of "acquisition" of such stocks, nevertheless, the commission nowhere in said findings, conclusion, order, or elsewhere, fixes or has fixed, or in any way finds or determines the said date of alleged acquisition as to which date said respondent is ordered to govern its action in the premises.

(d) That, therefore, as the commission has failed to fix the date of such alleged acquisition, and as the respondent certainly can not fix said date, since it denies that such acquisition ever occurred, it is therefore impossible, for the above reasons, as well as inexpedient, for the respondent either to obey said order or to submit any plan for the performance thereof.

(7) The respondent therefore, with all respect and for the foregoing reasons, is obliged to decline to obey or perform such order or any part thereof, and does not intend to comply therewith, pending such final judicial determination of the said issues.

THATCHER MANUFACTURING COMPANY,
By —— —— *Its President.*
(Signed) HERBERT KNOX SMITH, *Its Attorney.*

Dated January 31, 1924.

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

I, Otis B. Johnson, secretary of the Federal Trade Commission, hereby certify that the foregoing is a true and correct transcript of the entire record in a proceeding before the Federal Trade Commission entitled Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738, including all testimony taken and the report and order of the Federal Trade Commission therein, as the same appears and remains on file in the office of the Federal Trade Commission.

Such transcript is certified to the United States Circuit Court of Appeals for the Third Circuit and filed therein with the application of the Federal Trade Commission for the enforcement of its order made in said proceeding on December 31, 1923.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of the Federal Trade Commission at its office in the city of Washington, D. C., on the —— day of March, A. D. 1924.

[SEAL.] OTIS B. JOHNSON, *Secretary.*

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IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION—Filed March 31, 1924

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Federal Trade Commission hereby applies to the United States Circuit Court of Appeals for the Third Circuit for the enforcement of an order issued by the Federal Trade Commission on December 31, 1923, in a proceeding instituted by it against Thatcher Manufacturing Company entitled "Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738," and respectfully shows:

1. Thatcher Manufacturing Company is a corporation under the laws of the State of New York, and has its principal office and place of business in the city of Elmira, N. Y. It has branch offices at Boston, Mass., Philadelphia, Pa., Chicago, Ill., and in other States. Thatcher Manufacturing Company owns and operates glass factories at Elmira, N. Y., Kane, Pa., Mount Vernon, Ohio, and in other States, and is engaged in manufacturing milk bottles at such factories, and in selling, shipping, and delivering such bottles in interstate commerce to purchasers among the several States and the District of Columbia.

2. In pursuance of the powers and duties conferred by law and in conformity with an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), the Federal Trade Commission instituted a proceeding against Thatcher Manufacturing Company and issued and served on Thatcher Manufacturing Company a complaint stating its charges in that respect, and alleging therein that Thatcher Manufacturing Company had acquired the stock or other share capital of certain corporations in violation of section 7 of said act of Congress. Upon the hearing of said complaint the Federal Trade Commission, being of the opinion that the provisions of section 7 of said act of Congress

have been violated by Thatcher Manufacturing Company, made its report in writing, in which it stated its findings as to the facts, and on, to wit, June 26, 1923, issued and served on Thatcher Manufacturing Company an order requiring it to cease and desist from such violations of law, and divest itself of the stock held contrary to the provisions of said act of Congress.

3. Thereafter, upon due notice to Thatcher Manufacturing Company as prescribed by law, the Federal Trade Commission modified the said order made or issued as aforesaid, and on, to wit, December 31, 1923, made and issued a modified order requiring Thatcher Manufacturing Company to cease and desist from the violations of law stated in said findings as to the facts, and divest itself of the stock held contrary to the provisions of section 7 of said act of Congress, in the manner and within the time fixed by said order. The said modified order was duly served on Thatcher Manufacturing Company and is still in effect. A copy of such findings as to the facts and a copy of said modified order are attached hereto as Exhibits "A" and "B," respectively, and are made a part hereof.

4. Thatcher Manufacturing Company on, to wit, February 4, 1924, filed with the Federal Trade Commission a written answer to said order of December 31, 1923, and stated therein that it declined to obey or perform such order or any part thereof, and does not intend to comply therewith pending a judicial determination of the issues involved. Thatcher Manufacturing Company has not obeyed or complied with said order, and still fails or neglects to obey such order of the Federal Trade Commission while the same is in effect.

5. Thatcher Manufacturing Company has registered under the laws of Pennsylvania as a foreign corporation engaged in or carrying on business in the State of Pennsylvania, and has filed with the Secretary of the Commonwealth of Pennsylvania a certificate designating its principal place of business in the Commonwealth of Pennsylvania in Philadelphia, and appointing the Secretary of the Commonwealth of Pennsylvania and his successor in office to be its true and lawful attorney and authorized agent upon whom all lawful process in any proceeding against it may

be served. Thatcher Manufacturing Company has and maintains a branch office in Philadelphia, Pa., and owns and operates a glass factory at Kane, Pa., where it manufactures milk bottles which it sells, ships, and delivers to purchasers in Pennsylvania and other States, and it carries on business within the Third Judicial Circuit in the purview of said act of Congress above mentioned.

6. The Federal Trade Commission hereby applies to the United States Circuit Court of Appeals for the Third Circuit for the enforcement of its order described herein, and accordingly certifies and files with this application a transcript of the entire record in the proceeding against Thatcher Manufacturing Company, including all the testimony taken and the report and order of the Federal Trade Commission.

Wherefore, the Federal Trade Commission prays that notice of the filing of this application and transcript be served on Thatcher Manufacturing Company as required by law, and that this court take jurisdiction of the proceeding and of the question determined therein, and make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming the order of the Federal Trade Commission hereinabove described, and make and enter such other orders and decrees, and grant such other, further, or general relief in the premises as may be necessary to enforce compliance by Thatcher Manufacturing Company with the provisions of said act of Congress (the Clayton Act) and as the circumstances of the case may require.

Federal Trade Commission. W. H. Fuller, Chief Counsel; A. R. Brindley, Attorney, Solicitors for Petitioner.

Duly sworn to by Otis B. Johnson. Jurat omitted in printing.

Exhibit "A" to petition omitted; printed side page 232 ante.

Exhibit "B" to petition omitted; printed side page 255 ante.

In the United States Circuit Court of Appeals for the Third Circuit

OCTOBER TERM, 1924.

FEDERAL TRADE COMMISSION, Petitioner, *vs.* THATCHER MANUFACTURING COMPANY, Respondent.	No.————

REPLY OF THATCHER MANUFACTURING COMPANY

To the Honorable Judges of the Circuit Court of Appeals for the Third Circuit:

The Thatcher Manufacturing Company, the Respondent in this case, replies to the application of the Federal Trade Commission for enforcement of an order of said commission, and, answering the said application, says:

DIVISION I.— GENERAL DENIAL.

1. The Respondent in the above entitled cause, the Thatcher Manufacturing Company, denies so much of said Petition, Findings, Conclusion and Order as alleges that it, the Respondent, acquired any of the capital stock of the Essex Glass Com-

pany, the Travis Glass Company, the Lockport Glass Company or the Woodbury Glass Company or of either of them within the purview and in violation of the Act of Congress approved October 15, 1914 (the Clayton Act) or of Section 7 thereof.

It further denies that the Respondent acquired any of such stock in such a manner or with such effect as to substantially lessen competition between the Respondent and any one of said four companies, or as to restrain commerce as defined in said Act in any section or community, or as to tend to create a monopoly in any line of commerce.

And the Respondent further denies the allegations of said Findings that any transfer, transaction or conveyance in which the Respondent had a part was either an artifice or subterfuge to evade the provisions of said Act; or that the Respondent secured, retains or enjoys the fruits, benefits or advantages of any illegal acquisition of such capital stock.

2. The Respondent denies all the allegations of Paragraphs 42 and 43 of said Findings, and the Conclusion thereof. It denies that any of the foregoing allegations referred to in this Division are supported by the evidence in the case.

DIVISION II.—AS TO THE ORDER

1. The Respondent represents that if it ever owned or acquired any of the capital stock of the Essex Glass Company, the Travis Glass Company, or the Lockport Glass Company, it no longer holds or owns any of such stock, and did not hold or own any of such stock when the original Complaint of the Petitioner, dated March 1st, 1921, was filed

against the Respondent, because, as the Respondent alleges, and as is expressly found by the Petitioner in Paragraph 35 of said Findings, all of said three companies were dissolved on or before January 13, 1921, and none of the capital stocks thereof were in existence when said Complaint was filed. The Respondent therefore represents that it is not now possible for it to take any action in regard to any of the stocks of the said Essex, Travis or Lockport Companies.

As to the Woodbury Glass Company, the Respondent still holds at least the equitable title to its stock. But the relations between this company and the Respondent were in a different class; there was never any substantial competition between them; and the matter of the Woodbury Company is treated separately in Division IV, Sections 8 to 11, pp. 19 to 21 hereof.

2. The Respondent denies that the said Petitioner has any lawful power, right or jurisdiction to make or in any way enforce the Order issued against the Respondent and set forth in said Petition as Exhibit B. The Respondent more particularly represents that so much of said Order as relates to assets, properties, rights or privileges, or as relates to any other subject matter than the ownership of capital stock and the divesting of such ownership, or as attempts to require any action by the Respondent other than the divesting itself of capital stock, constitutes an attempt to exercise powers not conferred upon the Petitioner or lawfully exercisable by it.

3. The Respondent therefore represents that in so far as said Order relates or requires action

in regard to either the said Essex, Travis or Lockport Glass Companies, said Order is void and of no effect in that the powers therein attempted to be exercised are not within the jurisdiction of the Petitioner.

4. The Respondent further represents that said Order is imposible of performance, for the following reasons:

(a) The Petitioner, in its Findings and Conclusion alleges that the Respondent acquired the said capital stocks in violation of the said Clayton Act. But in no place and in no way in said Findings, Conclusion or Order or elsewhere does the Petitioner designate or in any way indicate or intimate with any degree of certainty the date or time at which such acquisition is alleged to have occurred. The Petitioner sets forth in its said Findings a series of numerous and complex transactions beginning at least as early as August 28, 1919, and extending to and beyond July 3, 1920, a period of more than ten (10) months. It thereupon merely finds that " The Respondent acquired that stock (Woodbury) through the transaction in the Guaranty Trust Company on August 28, 1919, *and subsequent proceedings stated in these findings;* and the capital stock of the Essex, Travis and Lockport Companies was included in the same transaction " (Findings Paragraph 36). It further finds that the acquisition of stock in question occurred on "August 28, 1919, *and the subsequent developments and transactions stated in these findings* " (Findings Paragraph 42).

But the Petitioner consistently refrains throughout said Findings and Conclusion, from

designating in any more certain manner than within said period of ten months, the date upon which such acquisition is alleged to have occurred. It thus leaves the date of such charged acquisition broadly uncertain, and assignable to any date within such period of ten months or more.

(b) The said Order, nevertheless, requires the Respondent to "cease and desist from the ownership **** of the assets, properties, rights and privileges acquired by it, from the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company **** together with all improvements and additions made thereto *from the time of such acquisition* to the date hereof." (Tr. p. 255.)

(c) The Order further requires the Respondent to "cease and desist from the ownership **** of said assets, properties, rights and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets **** which existed *prior to such acquisition.*" (Tr. p. 255.)

(d) The Order further requires the Respondent to "divest itself of all assets, properties, rights and privileges acquired **** together with all improvements and additions made thereto *from the time of such acquisition* to the date hereof." (Tr. pp. 255-6.)

(e) The Order further requires the Respondent to "divest itself of said assets, properties, rights and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets **** which existed *prior to such acquisition.*" (Tr. p. 256.)

(f) The Order further requires the Respondent to submit a plan for the performance of the terms of said Order.

(g) The Respondent represents that competitive conditions so referred to in said Order, the physical condition and title of the assets, properties, rights and privileges so referred to; and the improvements and additions made thereto, were all of them changing greatly daily and from time to time during the ten months covered by the purview of the Findings, to wit, from August 28, 1919 to July 3, 1920, (which ten months constitute the narrowest and most definite limits within which the alleged acquisition of stock can possibly be located or assigned under the terms of said Findings).

(h) Nevertheless, as appears in said Order, many, if not all of the things thereby required to be done by the Respondent, are conditioned and defined as to their scope, form and substance by reference to *the date of the alleged acquisition* of such stocks.

5. The Respondent therefore represents that it is impossible for it either to submit such a plan, or to perform said Order, in view of the foregoing facts and of such changing conditions, and because the substance of such plan and of such performance is necessarily determinable only as of some definite date, but is, by said Order, defined and prescribed as of a date which is left wholly indefinite and undeterminable.

6. The Respondent further represents that, as appears in its two Requests for Greater Certainty as to both the Proposed Modified Order, and the

Second Proposed Modified Order (Tr. pp. 251, 254), the Respondent, before the filing of the petition in this case, fairly and plainly raised with the Petitioner the objections set forth in this Division as to such uncertainty of governing date, and further amplified the same in open oral hearing, requesting greater certainty as to such date of alleged acquisition, and that the Petitioner had fully and plainly before it for consideration the said objections to such Order, before the Petitioner finally issued the same.

(Note: — All italics on the quotations cited above in this Division are by the Respondent).

(The Transcript itself is herein indicated by the abbreviation " Tr.").

DIVISION III. — DENIAL OF PARTICULAR ALLEGATIONS

The Respondent denies the following particular allegations set forth in the following named paragraphs of the said Findings and denies that said allegations or any of them are supported by testimony.

1. In Paragraph 5 — The Respondent denies that on August 2, 1919 the Woodbury Glass Company was selling milk bottles in commerce in competition with other persons, firms and corporations similarly engaged.

2. In Paragraph 5 — The Respondent denies that on or for several weeks prior to August 28, 1919 or at any time thereafter, the Woodbury Glass Company was in competition with the Respondent in the sale, transportation or delivery of

milk bottles in interstate commerce. And the Respondent represents that all competition in the milk bottle business between said Woodbury Glass Company and the Respondent ceased entirely for a substantial period before the inception of the transactions set forth, and never existed thereafter.

3. In Paragraph 10 — The Respondent denies that it is in any way substantially true that the Owens and Hartford-Fairmont bottle making machines were on August 28, 1919, or for a long period prior and subsequent thereto, or are now, the only successful entirely automatic bottle making machines operated as complete units. And as to such allegation, the Respondent represents that the testimony shows that successful entirely automatic bottle making units (other than the machines of the Owens and the Hartford-Fairmont Companies) were, during all of such period and still are, readily obtainable on the open market by combining certain feeding machines and forming machines so on the market (Tr. pp. 118-119).

4. Paragraph 16 — The Respondent denies that F. E. Baldwin, E. D. Libbey and William Ford, or either of them discounted any notes, as therein alleged, " on behalf of the Stirling Glass Company " or that the proceeds of said notes and the five hundred thousand dollars of the Stirling Glass Company were deposited in the Guaranty Trust Company, as therein alleged, " to the credit of the Stirling Glass Company." The Respondent denies that there is the slightest testimony supporting either of such allegations as to such discount " on behalf of the Stirling Glass Company "

or as to any such deposit " to the credit of the Stirling Glass Company." And the Respondent as to such allegations represents that, on the contrary, all of the voluminous testimony in the Transcript relating to such discount and deposit transaction, shows without the slightest divergence or contradiction, that such discounting and deposit were wholly on behalf of said three first named individuals.

And if these allegations be still insisted upon by the Petitioner, the Respondent is prepared to submit further evidence from the actual book entries of the Guaranty Trust Company, wholly disproving such allegations.

5. Paragraphs 17 and 18. In so far as it is implied in such Paragraphs that the stocks referred to there were acquired by the Respondent, the Respondent denies the same.

6. Paragraph 18. — The Respondent denies the allegation therein that the " Respondent conducted these four companies under their own management until January 1, 1920 " and also the allegation therein that " thereafter such companies were managed and directed by the Thatcher Manufacturing Company." And the Respondent further represents that there is no testimony supporting such allegations, and that, on the contrary, it appears in several places in said testimony (Tr. pp. 96-97; 115; 211) that prior to January 1, 1920, these companies continued under their own management, and after that date Mr. F. E. Baldwin personally " directed it from Elmira " (p. 97) " Under my (Baldwin's) control "; " I (Baldwin) managed it " " I directed it " (p. 115).

" Being directed by me (Baldwin) from Elmira " (p. 211); that Mr. Baldwin so testified in several places, and there is no testimony contradicting him on this point.

7. Paragraph 19 — In so far as it is implied in this Paragraph, in the first sentence thereof, that the stocks there referred to were acquired by the Respondent, the Respondent denies the same.

8. Paragraph 24 — The Respondent admits that Mr. F. E. Baldwin made the report quoted in this Paragraph. But the Respondent represents that insofar as it can be interpreted to imply an acquisition by the Respondent at that date of the stocks in question, such implication is misleading and ambiguous and due simply to the carelessness in use of language common in business transactions, and furthermore, that any such implied admission contained therein cannot bind the Respondent, and certainly cannot alter or modify in any way the actual legal status of owership, title or acquisition then existing by reason of the established facts relevant thereto.

9. Paragraph 26 — This Paragraph cites an order dated April 8, 1919, from the Illinois Glass Company to the Woodbury Glass Company to ship certain milk bottles, and thereon in conclusion alleges " It does not appear that such order or instruction was ever changed or discontinued." The allegation was made for the purpose of showing that the Woodbury Glass Company was in competition with the Respondent on August 28, 1919, four and one-half months later, but the Respondent represents that such order of April 8, 1919 has no probative bearing on conditions as of

August 28, 1919, unless there is positive testimony showing (a) that said order was not discontinued and (b) that it was being acted upon at the beginning of the transaction in question, about August 28, 1919; and the Respondent represents that no such testimony exists, and that the positive proof thus lacking cannot be supplied by the mere allegation that there is no proof to the contrary.

10. Paragraph 34.— The Respondent denies the allegation contained in the last sentence of this Paragraph, to the effect that the delivery (a) of the deeds, bills of sale and mortgages, and (b) of the proceeds of the bonds and (c) of the certificates of stock and the notes, were simultaneous. The Respondent represents that necessarily, as a matter of law and the orderly transaction of business, there must first have occurred (a) the delivery of the deeds and bills of sale to the Respondent in order to give it title to the assets covered thereby and about to be mortgaged by it; then (b) the delivery of the trust deed or mortgage, with its accompanying bonds, to the bankers; then (c) the delivery of the proceeds of said bonds by the bankers to the Respondent; then (d) the payment to the bankers by the Respondent of the original purchase notes from such proceeds, and finally (e) the delivery by the bankers to the Respondent of such paid-up notes, and the stock certificates which were the collateral thereof; and that whatever the physical course of the handling of these papers, the delivery and taking effect of the deeds and bills of sale so as to vest title to the assets in the Respondent must, in contemplation of law, and as governed by the intent of the parties, have pre-

ceded the delivery of the stock certificates to the Respondent.

11. Paragraph 36 — The Petitioner here alleges that acquisition of the stocks in question took place " through the transaction in the Guaranty Trust Company on August 28, 1919 and subsequent proceedings stated in these findings." It thereby expressly places the date of said acquisition somewhere or anywhere during a period of over ten months, without giving any more definite indication of such date. This method of statement and pleading throws upon the Respondent an intolerable burden, to wit, the asserting and establishing a negative over such prolonged period. During this period the other facts (other than acquisition) which relate to violation of the Clayton Act (namely, as to competition, restraint of trade, and tendency toward monopoly), and which other facts must coincide with the fact of acquisition in order to establish such violation of law, were continually and materially changing. It is impossible for the Respondent to conceive, work out, and sufficiently contravert all possible combinations of such two sets of facts, which combinations might be claimed to have existed at one time or another during such period. The Respondent therefore declines to assume the burden of denying any such indefinite allegation, and restricts itself, on this point, to the general denial set forth in Division I., Section 1 above.

12. Paragraphs 42 and 43. The Respondent denies each and every allegation herein.

13. Conclusion — The Respondent denies the entire Conclusion.

DIVISION IV.— RELEVANT FACTS PROVEN, BUT NOT FOUND IN SAID FINDINGS

The Respondent represents that there are many facts, having an important and in some cases a decisive bearing upon the issues in this case, which facts were fully established by the testimony, but which were not found or in any way stated as proven by said Findings and Conclusion; and Respondent therefore further respectfully represents that such facts should be found and stated as part of this case as follows:

1. That the transaction in question, which first took form on August 28, 1919, was wholly the private, personal, individual venture of three men Messrs. Libbey, Ford and Baldwin, except insofar as the Respondent, by investing $250,000. in Stirling Glass Company stock, took a subordinate and indirect minority interest in the venture, amounting to less than a ten per cent indirect interest.

2. That the following facts (indicative of such individual and personal character of the venture) were proven.

(a) That out of the total cash raised to purchase the stocks in question on August 28, 1919, to wit, $2,110,000., the said three individuals furnished $1,830,000. or over 86 per cent (Tr. p. 95) wholly raised upon their own private personal notes, bearing only their own individual endorsements.

(b) That all of the said three men made themselves individually liable on all the purchase notes,

in the sum of $1,610,000. (Tr. p. 95) in order to acquire such stocks, and yet no one of them took or received in any way any guarantee, assurance or agreement of any sort from the Respondent in any way relieving them of such liability, nor did any of them have any recourse whatsoever to the Respondent therein.

(c) That Mr. Baldwin, by virtue of the contract of August 28, 1919 (Tr. p. 36, Exh. G, Sec. 3) agreed under certain circumstances to assume personally the entire liabilities involved, of nearly $2,000,000, and later, on December 21, 1920, did so assume them and had no recourse to or assurance from the Respondent relieving him of such liability. (Tr. pp. 122, 198.)

(d) That after Mr. Libbey's withdrawal from the venture, Mr. Baldwin gave anxious and long continued efforts toward financing these liabilities as his own purely personal affair. (Tr. pp. 110, 122, 137, 144-5, 199, 216-217.)

(e) That after such withdrawal, Mr. Baldwin exercised individually and personally all the indicia of ownership or control of the said four Companies, named the new transferees of their stocks, and their new directors, and controlled the management of their affairs. (Tr. pp. 110, 111, 116, 150, 154, 211, 224.)

(f) That neither Mr. Baldwin nor any of the said three individuals used or availed themselves in any way of the money, credit, knowledge or other powers of the Respondent in making purchase of said stocks, except insofar as the Respondent did invest as a minority stockholder in the Stirling Glass Company.

(g) That Respondent when such purchase of stocks was made on August 28, 1919, took only a small and indirect minority interest in the matter, and was wholly a subordinate and non-controlling factor therein. (Tr. p. 95.)

(h) That for nearly the entire period of the transaction, to wit, from before August 28, 1919 to June 3, 1920, there does not appear in evidence a single official vote, act or authorization on the part of the Respondent or of its Board of Directors, relating in any way to the transactions presented in this case, or to the said four companies.

(i) That Respondent never had record title to any of the four stocks in question. (Tr. pp. 127, 157-8, 180.)

(j) That Stirling Glass Company never had record title to any of said stocks. (Tr. pp. 127, 180.)

(k) That neither Respondent nor Stirling Company ever issued or attempted to issue or caused to be issued or used any proxies relating to any of said stocks, and never attempted to exercise any control over them. (Tr. p. 127.)

(l) That before the certificates of these stocks were delivered to Respondent on July 3rd, 1920, all the assets, properties, rights and privileges of the Essex, Travis and Lockport Companies had become legally vested in Respondent, and legally divested from said three companies. (Tr. pp. 99, 110, 111, 132.)

(m) That the only relation or connection of any sort ever existing between Respondent and the stocks of any of the said four companies was

wholly comprised in the following state of facts.

(1) Respondent owned from August 28, 1919 to June 4, 1920, exactly one-half of the Stirling Company. (Tr. pp. 95, 159.)

(2) Stirling Glass Company had, by virtue of the contract of August 28, 1919, an option to acquire said stocks by paying off the "purchase notes." (Tr. p. 37, Exh. G, Sec. 1.)

(3) Stirling Glass Company never paid off these notes and never exercised the option. (Tr. p. 122).

(4) On December 21, 1919, upon the withdrawal of Messrs. Libbey and Ford, the entire liabilities in connection with the purchase, fell upon Mr. Baldwin, by virtue of the said contract, (Tr. pp. 110, 121, 122, 123, 132, 137, 138, 144, 198, 215), and as a necessary consequence he also then took over the right to acquire said stocks upon paying off said notes, and the similar option to Stirling Company, above mentioned, was divested from Stirling and vested in Mr. Baldwin. (Tr. p. 37, Exh. G, Sec. 3.)

(5) That said option of paying off said notes was never exercised by anyone until July 3, 1920, (and then by Respondent) and before such payment, all of the assets of the Essex, Travis and Lockport Companies had vested in Respondent, and at the time of the delivery of such three stocks, there were no assets or properties whatsoever covered by or behind such stocks.

(6) That any acquisition of the stocks of the Essex, Travis and Lockport Companies on July 3, 1920 had and could have had no effect whatsoever upon competition, restraint of trade or cre-

ation of monopoly, because such acquisition was an incident to the purchase of assets, and not a means or a cause of such purchase.

(n) That Mr. Baldwin, from the beginning of the whole transaction, and especially after coming into personal control of the four companies in December 1919, was honorably, sedulously and consistently careful to avoid entangling or committing the Respondent Company in any way in the rights or liabilities relating to these stocks. His course to that end is evidenced by numerous items of the testimony. (Tr. pp. 110, 145, 146-7, 198-9) and especially on page 218, in the conversation between Mr. Mandeville, Vice President of the Respondent, and Mr. S. G. H. Turner, one of its directors:

> "Q. Mr. Baldwin testified this morning that there was no conference, agreement or understanding of any sort which would have allowed him to command the Thatcher Company to take over this liability. Is this your understanding?"
>
> "A. Yes, sir; I talked with some of the directors of the Thatcher Company about it."
>
> "Q. What was the nature of that discussion?"
>
> "A. The particular discussion that I have in mind was with Mr. S. G. H. Turner, who was a director and president of the Second National Bank, and represented in the board the J. S. Fassett interest in the Thatcher Company. He said that it had been discussed among the directors and

that it was impossible for the Thatcher Company to take over these companies because it would swamp them if it did."

"Q. So both you and Mr. Baldwin laid aside the possibility or the propriety of having the Thatcher Company assume this liability?"

"A. Yes, sir, because we could not tell how to meet it; and directly we found it could be financed, we took it up again with the Thatcher Company."

The Respondent did not enter the deal at its inception, either directly or by intention, and came in later only after a number of months, as an afterthought, after the liabilities had been financed, and then only as the recipient of the *assets* of the said four companies.

3. That the entire plan, at its beginning on August 28, 1919, of the parties interested in the transaction in question, was uncertain, as to its possible future development; that such future might then take either of two courses, and that the plan, as finally crystallized in the contract of that date, was therefore framed in two alternatives. (Tr. pp. 98, 121, 136, 144-5, 147, 157, 199, 223.)

4. That the first of these alternative possibilities thus provided for was the event where the desired rights of the Hartford-Fairmont Company should be secured. In this case, Mr. Libbey was to be the dominating factor; the securing of the Hartford-Fairmont rights was his governing motive; the Stirling Glass Company was to be expanded to take in all acquisitions (including possibly taking over the Respondent Company also),

and to assume all liabilities. (Tr. pp. 93, 146.)

The second of the alternatives was the event where the desired purchase from Hartford-Fairmont Company should fail; and in this case, Mr. Libbey, his main interest in the deal having thus been disappointed, was to withdraw, and thereupon, inasmuch as someone had to be prepared to take over the deal and assume the liabilities involved, Mr. Baldwin was so to take over and assume (Tr. p. 121).

5. That the first alternative failed, and the second alternative became the only course, and Mr. Baldwin therefore became the sole legatee of the rights and liabilities created up to that point, namely on the tenth day after withdrawal of Libbey and Ford, i. e. December 21, 1919. (Tr. pp. 40, 41, 113.)

6. That such a situation was contemplated by the parties on August 28, 1919, is the only satisfactory explanation of the contract of that date, and all the conduct of affairs thereafter bears out such explanation.

7. That at all times between December 21, 1919 and July 3, 1920, Mr. Baldwin was in complete personal control of the Essex, Travis, Lockport and Woodbury Companies, and could have transferred all or any of the stocks, or assets or other properties of these companies to any corporation or person whom he might have selected, and no other corporation or person could have prevented such transfer. (Tr. pp. 110, 116, 150, 154.)

8. That the case of the Woodbury Glass Company differs from the cases of the Essex, Travis, and Lockport Companies, because all the assets

of said last three companies were transferred to the Respondent, and the corporations dissolved; while the assets of the Woodbury Company were not transferred, the company still exists, and the Respondent is the owner, in equity at least, of its stock, and that therefore the competitive situation between Respondent and Woodbury Company is relevant, as follows: —

9. That Respondent made and sold only milk bottles. That Woodbury's main business was in condiment ware. (Tr. pp. 90, 169.) It had at one time a small and diminishing business in milk bottles, with an obsolete equipment, (Tr. pp. 177, 184, 189), but in April 1918, over a year before the inception of the transaction in question, it contracted to license and operate Hartford-Fairmont feeders which would take up all of its "tank" (manufacturing) capacity, and which, by the express terms of the licenses, could not be used in making milk bottles. (Tr. p. 189..) It had thus already in 1918 decided to go out of the milk bottle business.

10. That in 1918 and 1919 the total production of milk bottles in the United States was over 1,000,000 gross (Tr. p. 200) and that of the Respondent over 300,000 gross. (Tr. pp. 128, 186.) That the total milk bottle production of the Woodbury Company in 1918 was 34,000 gross; in the first half year of 1919, 8,000 gross, (Tr. p. 189); that it ceased such production entirely in July 1919 (Tr. p. 188), and that at the inception of the transaction, August 28, 1919, (and the earliest possible date on which the alleged acquisition can be assumed to be charged), Woodbury Company was

making no milk bottles and had on hand only a remnant stock of mis-branded odd sizes amounting in all to between 500 and 1000 gross. (Tr. p. 188.) That this remnant of a discontinued production was so insignificant that neither Mr. Baldwin nor Mr. Mandeville knew of it until three years later, when they actually heard the testimony in this case. (Tr. pp. 117, 179, 180, 184, 185, 221-2.)

11. That the foregoing facts as to the competitive conditions between Respondent and Woodbury Company all relate to the date of August 28, 1919, and that if the date of the alleged acquisition of stocks, is intended to be claimed as having occurred at any later date within the ten months over which the Petitioner's Findings distribute it, then such remnant of competition would be correspondingly reduced.

DIVISION V.— PRACTICAL EVIDENCE AS TO RESTRAINT AND MONOPOLY.

1. The Respondent further represents that there is no evidence of any substantial lessening of competition, real restraint of commerce or tendency toward monopoly resulting from the acquisition by the Respondent of the assets of the Essex, Lockport or Travis Companies, (or in any connection with the Woodbury Company). There nowhere appears any of the decisive indicia of such real lessening, restraint or monopoly. There is no evidence whatsoever of any of those results disadvantageous to the public which always accompany, and are the best proof of the real ex-

istence of such evils. The evidence shows positive advantages arising to the public from the combination in question, and no disadvantages: (a) Competition increased instead of lessening: (b) There was more freedom of commerce instead of less; (c) Prices of milk bottles were reduced, in the face of greatly advanced costs; (d) Not a single instance of unfair or oppressive business conduct or competition was discovered.

2. More specifically, these facts were as follows:

Competition in the manufacture of milk bottles has actually increased since the acquisition of said assets. There were at the time of taking of testimony (August 14, 1922), a large number of outside concerns which were making milk bottles, about fifteen being enumerated on page 109 of the Transcript. While Respondent had at that time only 11 furnaces in all making milk bottles (Tr. p. 110), there were in operation on that date 19 outside competing furnaces. (Tr. pp. 120, 121.)

The said transaction and acquisition made such a decrease in the comparative costs of manufacture and such savings derived therefrom as to result in important reductions of price of the articles produced by the Respondent. (Testimony of Mr. Baldwin, President of the Respondent Company.)

> (Tr. p. 107) "I think the gentleman that represented your commission here found by examination of the books and records that the average increase in the cost of material, labor and freight was 350 per cent. We increased the price of bottles about 100 per cent."
>
> "Q. What year was that?"

"A. That was during the year 1920 and 1921. No, 1920."

(Tr. p. 124.)

"A. I paid $2. a hundred for soda ash — I used to get it for 45 cents."

"Q. How about sand?"

"A. We had a contract for sand in the east for $1.15 a hundred and it went up to $3.50 a hundred. ** Coal — we had a contract for $3. and $3.50. We bought six cars of coal that we paid from $11. to $13. for at the mine. Freight increased just 100 per cent ** Labor increased a good deal more than 100 per cent and crating increased a full 300 per cent.

"Q. What is the largest single item of cost of material?"

"A. Soda ash is the most important item. *** next is coal and crating."

"Q. Now, the c[illegible]se of your prices, Mr. Baldwin. Can yo[illegible] give me an outline of them?"

"A. I can not. Our records would show we increased the price twice, I think, and got it up to about 100 per cent of what it was before the war, and then we started on the 1st of May by decreasing it — the 1st of May, 1921. We have made four reductions."

"Q. How does it compare now with the pre-war prices?"

"A. It is a little above the pre-war prices."

"Q. How much above?"

"A. I could not say how much, but if the freight was down to where it was *** and we took that off, we would be down as low as we were before the war ***."

"Q. To say nothing, however, of the still existing higher cost of materials ***."

"Q. And you have made these reductions. Could you have made them with the still large cost of materials, had it not been for the increased efficiency of your plant?"

"A. We could not."

Although costs of all the factors going into milk bottles increased greatly during the war period, there was no such corresponding increase in the price of milk bottles to the public and there were subsequently important reductions of such prices. During the war period, costs of important materials for milk bottles increased as follows: —

Soda ash	400%
Sand	300%
Coal	300%
Freight	100%
Labor	100%
Crating	300%

Prices, on the other hand, were increased twice during that period, but with a total increase of only about 100%. Then, beginning with May 1, 1921, prices were reduced four times, bringing them down to a figure which would be as low as the pre-war prices if the freight charges alone were back on the pre-war level.

No evidence whatsoever has been submitted or suggested showing any unfair or oppressive business practices by the Respondent.

The Respondent therefore denies that the evidence in the case supports the findings upon which said Order is based. It further denies that the Respondent acquired any capital stock of any company in violation of the Act of Congress approved October 15, 1914 (The Clayton Act). It further denies that the Federal Trade Commission had power to make or enforce the Order in question.

WHEREFORE, Respondent prays that the said petition be dismissed at the cost of the Petitioner.

THATCHER MANUFACTURING COMPANY,

By.....

Its Attorney.

State of New York }
County of } ss.

Francis E. Baldwin, being duly sworn, according to law, deposes and says that he is President of the Thatcher Manufacturing Company, Respondent above, and its agent in this behalf, and that the averments of fact contained in the foregoing reply of the Thatcher Manufacturing Company are true and correct, as he verily believes.

.....

Sworn and subscribed to before me this .....

day of ..... 1924.

.....

Notary Public.

My Commission expires.....

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING CO., Respondent

And afterwards, to wit, on the 2nd day of December, 1924, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 16th day of April, 1925, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

On Application for Enforcement of an Order of the Federal Trade Commission

Before Buffington, Woolley, and Davis, Circuit Judges

WOOLLEY, Circuit Judge:

The Federal Trade Commission asks this court to enforce an order it has made against the Thatcher Manufacturing Company, the respondent, commanding it to cease and desist from the ownership and control of the assets and properties of three corporations which it obtained through its acquisition of their capital stock, to divest itself of the assets and properties so acquired, and to divest itself of the stock or share capital of a fourth corporation. The proceedings were begun by a complaint filed by the Commission under Section 7 of the Clayton Act (38 Stat. 730) charging the respondent, first with the acquisition of the entire capital stock of four competing corporations, and, next, with its acquisition of all the assets and properties of

three of those corporations through its stock control, the effect of which was substantially to lessen competition, restrain commerce and create in the respondent a monopoly in the business of manufacturing milk bottles. The order was made on elaborate findings of fact based mainly on a stipulation as to facts entered into by the parties and on other matters obtained from records which the respondent freely opened and made available. There is therefore little dispute about the facts and no trouble in deciding that the Commission's findings are, except in one matter, sustained by the evidence. The controversy turns on the inferences properly to be drawn from the facts and therefore on the single question whether the transactions were in violation of Section 7 of the Clayton Act. As they were highly complicated we shall, in stating the case, give only enough to show their character and effect.

Of the corporate actors in this case the Thatcher Manufacturing Company, the respondent, is a corporation of the State of New York with its principal office and manufacturing plant at Elmira, New York, and branch manufacturing plants in West Virginia and Ohio. It was engaged in the manufacture of milk bottles by automatic bottle-blowing machines under an exclusive patent license from the Owens Bottle Company.

The Essex Glass Company was a corporation of the State of Ohio having its principal office at Mount Vernon, Ohio, and plants in Ohio and West Virginia.

The Travis Glass Company was a corporation of the State of West Virginia with its principal office and manufacturing plant at Clarksburg, West Virginia, and a branch plant at Cedar Grove, West Virginia.

The Lockport Glass Company was a corporation of the State of New Jersey with its principal office and manufacturing plant at Lockport, New York.

The Woodbury Glass Company is a corporation of the State of Indiana with its principal office and manufacturing plant at Winchester, Indiana.

The J. T. and A. Hamilton Company was a corporation of the State of Pennsylvania with its principal office and manufacturing plant at Pittsburgh, Pa.

All these corporations were engaged in manufacturing milk bottles and selling them in interstate commerce in competition with one another and with other concerns similarly engaged.

The Owens Bottle Company was a corporation of the State of Ohio, with factories in Ohio, West Virginia and Indiana, and was engaged in the manufacture and sale of glassware but not in the manufacture of milk bottles. It had acquired the exclusive right to use the Owens bottle-blowing machines in the United States and had granted the respondent an exclusive license under the patents for the manufacture of milk bottles.

In 1917 the Hartford-Fairmont machine appeared in the art. This was another automatic bottle-macking machine and it quickly demonstrated that it was the equal and in some respects the superior of the Owens machine. These two were the only successful entirely

automatic bottle-making machines then in use. Exclusive licenses to use the Hartford-Fairmont machine for manufacturing milk bottles were secured by the Essex, Travis, Lockport and J. T. & A. Hamilton Companies. The Woodbury Company secured a non-exclusive license to use the Hartford-Fairmont machines for making bottles of other kinds.

Early in 1919, I. T. Axton, president of the Woodbury Company, conceived a plan of merging the Woodbury Company with the companies that held Hartford-Fairmont licenses. Axton controlled the common stock of the Woodbury Company and secured options on the entire capital stock of the Essex, Travis and Lockport companies and an option on the machine, license and milk bottle business of the J. T. & A. Hamilton Company. Failing in his attempt to merge these corporations, Axton approaches F. E. Baldwin, president of the respondent corporation, and suggested that he take over his options and carry out the merger. Baldwin consulted H. C. Mandeville, a director of the respondent, and also E. D. Libbey, president of the Owens Bottle Company, to that end. The Owens Bottle Company offered no objection to the plan and, being interested in competitive bottle-making machines, Libbey agreed to go into the deal and assist in raising the necessary money, provided he could acquire the Hartford-Fairmont patents. Baldwin, Mandeville and Libbey then took over the Axton options and proceeded to exercise them. Up to this time the respondent had not appeared in the transaction. This was in August, 1919, the options expired on September 1, following. With some haste Mandeville secured the incorporation of the Sterling Glass Company, Inc. to serve as a temporary means through which to exercise the options and effect the merger. This company was incorporated under the laws of New York with an authorized capital of $600,000. Stock for $500,000 was issued at par for cash. One half of its issued capital stock was taken by E. D. Libbey and the other half by the respondent. The sum of $2,110,000 in cash was required to carry out the options. Of this, $500,000 was available from the Sterling Company. The balance, or $1,610,000, Baldwin, Libbey and William Ford, the latter a business associate of Libbey, arranged to borrow from the Guaranty Trust Company of New York on their individual promissory notes, each note to be endorsed by the makers of the other two so that all were equally liable. On August 28, 1919, the stockholders of the Essex, Travis, Lockport and Woodbury Companies and Baldwin, Libbey and Ford met at the office of the Guaranty Trust Company. The precise order of the events which followed is difficult to ascertain. They were in substance as follows: Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money which they turned over to the Sterling Company, and the Sterling Company, then being in possession of the full purchase price, paid the same to the holders of the stock of the Essex, Travis, Lockport and Woodbury Companies and received their certificates endorsed in blank, which it turned over to the Trust Company as collateral security for the notes. With the balance of the money, the Sterling Company (or Baldwin) paid for the outright purchase of the machines, license

and rights of the Hamilton Company. As the order under review does not require the respondent to divest itself of the physical properties purchased from the Hamilton Company, we shall not consider the part of the transaction affecting that company nor shall we mention it except when necessarily incidental to the other phases of the transaction.

Immediately after the capital stock of the four companies had thus been acquired, Baldwin appeared before the vendors and requested the officers of the four companies to remain in their respective positions and continue the operation of the companies until further directed. The respondent controlled these corporations under their respective managements until January 1, 1920, when their entire business was taken to Elmira and thereafter managed directly by the respondent. After the capital stock of the Essex, Travis, Lockport and Woodbury Companies had been acquired, Baldwin, Libbey, Ford and the Sterling Company entered into an agreement in which, by preamble, they stated that it was their purpose at a later date to organize a permanent company to take over the plants and assets of the four companies together with the plants and assets of the respondent, and to that end they agreed that the Sterling Company should save harmless the other parties to the agreement from all liability arising from the notes and that "upon the payment of the said notes all of the collateral thereto shall become the property of the Sterling Company;" that if Libbey should not acquire the Hartford-Fairmont patents, or if the parties should fail to agree upon the form, capitalization, or organization of the permanent company, Libbey and Ford might at any time, on notice to Baldwin, retire from the agreement; that in the event of their retirement, Baldwin should assume all liability under the contract and all liability upon the notes and repay Libbey the $250,000 he had invested in the capital stock of the Sterling Company; and that, thereafter, Baldwin should proceed with the organization of the permanent company in such manner as he might see fit.

Shortly after entering into this agreement Libbey found that he could not acquire the Hartford-Fairmont patents and thereupon served notice on Baldwin of his intention, and the intention of Ford, to retire from the transaction. On the retirement of Libbey and Ford the plan for a permanent corporation, into which all the companies including the respondent were to be merged, came to an end and a new situation arose in which there were outstanding individual obligations of Baldwin, Libbey and Ford amounting to $1,610,000 due the Trust Company, the obligation of Baldwin to buy Libbey's $250,000 of stock in the Sterling Company and his obligation to assume Libbey's and Ford's indebtedness. There was also outstanding an obligation on the part of the Sterling Company to save harmless all the parties to the agreement from all liability arising from the making and endorsing of the notes. The Sterling Company had no money, for it had expended its whole capital of $500,000 in supplying a part of the purchase money for the stock of the four companies. Here the respondent again entered the transaction and paid Libbey $250,000 and interest thereon, and took up Libbey's

stock in Sterling Company and received the certificates. The respondent then held $500,000 of the full paid capital stock of the Sterling Company, all of which had entered into the purchase of the stock of the competing companies. With the Trust Company loan unpaid, the certificates for the stock of the Essex, Travis, Lockport and Woodbury (held by the Trust Company as collateral) were sent to Elmira and there formally cancelled and new certificates issued to persons nominated by Baldwin, and then, on being endorsed in blank, they were delivered to the Trust Company as collateral security for the loan. All the new certificates were issued to four persons, Baldwin, Mandeville, Niver and Collins, officers and employees of the respondent corporation. Baldwin was elected president and Collins secretary of the four companies. None of the persons to whom the stock was issued paid any money for it or gave any other consideration.

The relation of the respondent with the four companies continued financially intimate. It advanced $40,000 to the Woodbury Company and $25,000 to the Travis Company, and received $75,000 from the Essex Company which it mingled with its funds and treated as its own. In an annual report which Baldwin made to the stockholders of the respondent corporation he referred in terms of congratulation to the merging of the Essex, Travis, Lockport and Woodbury companies with the respondent and its purchase of the Hartford-Fairmont milk bottle machine and business of the Hamilton Company. Without quoting this communication it is enough to say that it states without doubt that the transactions of purchase and merger were made by the respondent corporation and were greatly to its financial advantage.

The indebtedness upon the three notes given by Baldwin, Libley and Ford was still running, and in order to meet it when it should mature an agreement was made by Baldwin with two bond houses of New York. This agreement provided that the respondent should acquire all "the assets and business" of the Essex, Travis and Lockport Companies and all the shares of stock of these companies then owned by the Sterling Company (all the stock of the latter company being owned by the respondent), and that it should also acquire all the common stock of the Woodbury Company then owned by the Sterling Company, and that the respondent should assume all the obligations of all of these corporations and that, thereafter, they should be dissolved. It was further agreed that the respondent should increase its capitalization from $1,000,000 to $1,625,000 and should issue $2,000,000 of bonds to which the bond houses would prescribe. All this was eventually, and contemporaneously, carried out at a meeting at which all interested parties were present. At this meeting the Essex, Travis and Lockport Companies, by separate bills of sale, for the consideration of one dollar, conveyed all their property and assets of every kind to the respondent. The respondent delivered to the bond houses $2,000,000 of bonds secured by its mortgage or deed of trust covering all the property which it originally owned and all the property which it had just acquired by the bills of sale. The bond houses paid the respondent for the bonds. With

this money the respondent paid the Trust Company the amount due upon the Baldwin, Libbey and Ford notes, and the Trust Company surrendered the shares of the four companies which it held as collateral. Some days later the Essex, Travis and Lockport Companies (together with the Sterling Company) were dissolved. The stock of the Woodbury Company was delivered as additional security for the bonds. In due course the bonds were called and retired and the mortgage or deed of trust given to secure them was cancelled. The respondent now holds the entire common capital stock of the Woodbury Company, and all the properties of the Essex, Travis and Lockport Companies free of the lien of the mortgage or deed of trust and free of any obligation arising from the recited transactions.

The provision of Section 7 of the Clayton Act which the Federal Trade Commission found that the respondent corporation had violated reads as follows:

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The Commission found that the respondent had violated this section by its "acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and in the subsequent developments and transactions stated in these findings" consisting mainly of the "transfer and conveyance to the respondent of the assets, rights and properties" of these companies, and their subsequent dissolution, and held that "these were an artifice and subterfuge of the respondent to evade the provisions of the said Act of Congress and to escape the penalties thereof." The respondent, on the other hand, thought it discerned in the Clayton Act a difference between the acquisition of stock of a competing corporation and the acquisition of its physical properties and, accordingly, conducted the transactions along the line of that theory. It now complains that the Federal Trade Commission, by its order and by its petition here presented for its enforcement, is endeavoring to enlarge the words and expand the meaning of Section 7 of the Act from the acquisition of stock of a competing corporation, which in terms is prohibited, to the acquisition of property of a competing corporation, which is not prohibited in terms. However this may be, the record in this case does not raise a question involving this distinction but presents squarely the question whether by the transactions recited the respondent, in violation of the literal terms of the provision, did "acquire, directly or indirectly," the stock of two or more corporations, "where the effect of such acquisition, or the use of such stock

by the voting or granting of proxies or otherwise, may be" to bring about the forbidden situation in commerce.

For defense on this issue the respondent admits, of course, that it acquired the physical properties of the named competing corporations but denies that it ever acquired their stock, directly or indirectly. It takes the position that the adventure was Baldwin's; that it was mainly with money borrowed on the credit of his name that the stock was bought; that on the withdrawal of Libbey and Ford the whole liability for meeting the notes and the whole responsibility for putting through the transaction were his; that the stock was transferred from the vendor holders to his nominees; that the shares were never transferred to the respondent nor was there ever any record evidence of its ownership; that the stock and the administration of the purchased corporations were likewise within the control of Baldwin to do with as he might see fit; that the most the respondent acquired in respect to the stock of the several corporations was the equitable title after these corporations had conveyed all their assets and properties to it; and that these conveyances made the stock whose equitable title the respondent had thus acquired valueless, because no assets or properties of any kind stood behind it. And finally, the respondent contends that the Act was not violated because the stock when acquired was not the stock of competing corporations within the sense of the Act because these corporations in disposing of their physical property to the respondent had also sold to it their licenses for bottle-making machines, without which they were not then able to do business and compete in commerce.

We have not been persuaded to this view of the transaction. To obtain the correct view we shall look at the transaction through the eyes of the statute. Primarily at least the statute (Section 7) deals with acquisition of stock of one corporation by another, in terms it is silent as to the acquisition of property of one corporation by another. So, in this case, we shall look for stock acquisition, not for acquisition of property. Acquisition, as that word is used in the statute, means ownership; ownership involves title; and title is of two kinds, legal and equitable. In inquiring into the respondent's ownership of the stock of the four companies we shall look at the title of the stock and follow it through its devolution. In doing this we first find title in the original unnamed owners who have for money considerations sold their shares and divested themselves of all title. When the title left them it went to somebody else. Who was it? This question may be answered by finding whose money moved the title from the original owners. Of this money $500,000 was that of the Sterling Company, given it by the respondent and Libbey for the express purpose of buying these shares. The balance of the purchase money was obtained from the Trust Company by Baldwin, Libbey and Ford on their personal notes. On payment for the stock the original owners delivered the certificates endorsed in blank for negotiable purposes. Delivered them to whom? This is not clear; but it is clear that, on delivery, the certificates were lodged with the Trust Company as collateral

security for the loan to Baldwin, Libbey and Ford and that the title on leaving the original owners passed to someone else. To whom? This is difficult to answer, and we think not necessary to answer just now, for the reason that the transaction of purchase had not been completed and was then, by the terms of the agreement, liable to transformation, as afterwards occurred. Baldwin had not contributed to the purchase any money of his own although admittedly the purchase money was in part raised on the credit of his name and in part with funds of the Sterling Company, a subsidiary of the respondent. Whether Baldwin and the Sterling Company thus became part owners of the legal or equitable title of the shares is also unnecessary to decide, for the next thing that happened was the transfer of the stock (while still held by the Trust Company as collateral) from the names of the original owners to names of men mentioned by Baldwin, of whom he himself was one. Concededly the other three men had contributed nothing to the stock purchase and never had title in themselves, unless, indeed, they held title for the real owners of the shares, whoever they were.

In this situation the respondent was operating the four companies from its central office, directing its affairs, making financial contributions to and receiving financial returns from some of them.

The next event touching title was the withdrawal of Libbey and Ford from the transaction, leaving Baldwin or someone else to pay their notes when they matured. Baldwin did not meet these obligations but arranged with the respondent to do it. And this the respondent did by first augmenting its assets by acquiring the physical assets and license rights of the three competing corporations and the common stock of the fourth and issuing its bonds for $2,000,000 secured thereby, and with the proceeds of the bonds paying the personal indebtedness of Baldwin, Libbey and Ford. Thus the respondent with its own money directly supplied the larger part of the purchase money, and with its own money, through the Sterling Company, indirectly paid the balance of it. So in the last analysis the whole purchase price of the stock of the four competing corporations was paid by the respondent company with its own funds. While throughout the transaction Baldwin and the respondent kept the name of the respondent off the certificates for the shares of the four companies, the fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for. It is difficult to see how the use of the respondent's money in the purchase of the shares did not draw to it the ownership of the shares. The interposition of the Sterling Company, created by the respondent to spend its money in the purchase, was not the act of a legal entity which can blind the court to the real transaction or bar the operation of the statute. "Courts of equity will look behind a corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice." United States vs. United Shoe Machinery Company, 234 Fed. 127;

278 U. S. 451; Brown v. Pennsylvania Railroad Company, 247 Fed. 669; 250 Fed. 513. "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." United States vs. Milwaukee Refrigerator Transit Company, 142 Fed. 247.

The respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal considerations by "use" of its control over those corporations, and its control was effected only because of its ownership of their stock. Baldwin did not own the stock because he had never paid any money for it. If, however, the shares belonged to Baldwin by virtue of their purchase with money partly raised on his note, then the shares still belong to him, for there is no evidence that he has sold them to the respondent. Yet the respondent admits that it holds the equitable title to the shares for the reason that finally the shares were paid for with its money.

Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

To carry out the purpose of the statute the Commission therefore made an order commanding the respondent (a) to cease and desist from the ownership and control of the assets and properties of the three corporations it had acquired through its acquisition of their stock; (b) to divest itself of the assets and properties thus acquired and of the control of the said stock; and (c) to submit for the approval of the Commission a plan for the performance of the order, jurisdiction for that purpose being retained. The respondent maintains that, aside from the merits of the case, the order is invalid first, in that it exceeds the powers conferred upon the Commission by the Act, and second, in that it is, in the circumstances, impossible of performance. It bases its contention first on the statute which it says limits the authority of the Commission to a command addressed to the offending corporation to divest itself of the "stock" of another corporation acquired in violation of the Act, and next on the difficulty, or impossibility, of disassembling the assets of the corporations acquired from assets of its own. On the first position we hold that the Act is remedial, not punitive. Western Meat Company vs. Federal Trade Commission, 1 Fed. (2d) 295, rehearing Fed. Therefore the sole purpose of a valid order of the Com-

mission must be to remedy an unlawful situation. In effecting the remedy, however, the Commission must meet the situation as the offending corporation has made it. If it created the situation so as to defeat the statute, the offending party cannot be heard to say that thereby the Commission is helpless and the law unenforcible. The familiar principle that a person can not profit by his own unlawful act applies. Not in every case can the Commission reach property acquired through stock acquisition, but where, as in this case, the offending corporation has stripped the stock of its value and where, accordingly, the mere divesting itself of the stock would leave the corporation in full possession of the entire fruits of the forbidden transaction, we are of opinion that the statute empowers the Commission to carry out its purpose by extending its hand to the property. Nor do the acts of the offending corporation in commingling the assets of the corporation whose stock it has acquired in violation of the statute with assets of its own raise a legal barrier against remedying an evil which the law was expressly enacted to prevent. Just how, in a practical way, this shall be done in the case at bar the Commission purposely left open by the last paragraph of the order which directed the respondent to submit a plan to that end. As no plan has been submitted, none is before us. Therefore, with the way to do the thing we are not presently concerned.

The order of the Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company is approved and its enforcement directed.

Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The Act, by express terms, says that Section 7 does not apply to a corporation "purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition." Testing the transaction (as it affected the Woodbury Company) by the whole of Section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whiskey bottles and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over 1,000,000 gross. The evidence also shows that it was gradually getting out of the milk bottle business and that, indeed, before the transaction in question arose it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a non-exclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars, and glass-ware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged and therefore in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk bottles and accordingly to

end its competition in milk bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are therefore of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened competition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is therefore not approved and will not be enforced.

BUFFINGTON, J.:

In view of this case involving a far reaching question of jurisdiction I note my dissent. The original purpose Baldwin had in view, and which he finally carried out, was the acquisition and absorption of the several corporations involved by the purchase of their entire properties. If, in so doing, he suppressed competition the remedy for such wrong was vested in the courts and not in the trade commission.

The necessity for the prompt exercise of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock acquisition plan, but in my judgment the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock, and jurisdiction over it, if amenable to the law, was vested in the Federal Courts and not in the Federal Trade Commission. Such being my view I feel it my duty to respectfully record my dissent.

Endorsements: 3167. Opinion of the Court by Woolley, J. Dissenting Opinion by Buffington, J. Received & Filed Apr. 16, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCT. TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

Petition for Enforcement of Order of the Federal Trade Commission of the United States

This cause came on to be heard on the transcript of record from the Federal Trade Commission of the United States and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed that the order of the said Federal Trade Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, is approved and its enforcement directed; but, insofar as it relates to respondents' acquisition of the stock of the Woodbury Glass Company, it is not approved and will not be enforced.

Philadelphia, April 16th, 1925.

Victor B. Woolley, Circuit Judge.

Endorsements: 3167. Order Directing Enforcement of F. T. C. Order in Part. Received & Filed Apr. 16, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1925

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Comes now the Federal Trade Commission, the petitioner herein, and respectfully shows to the Court as follows:

1. That the decree made and entered in this cause on April 16, 1925, contains the following provisions, to-wit: "it is now here ordered, adjudged and decreed that the order of the said Federal Trade Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company is approved and its enforcement directed; but in so far as it relates to the respondent's acquisition of the stock of the Woodbury Glass Company, it is not approved and will not be enforced." Said decree has been duly entered and contains no other provisions.

2. That since such decree was made and entered this petitioner has discovered that said decree is indefinite, and omits any specific direction that the respondent do or perform any particular act in complying with said decree, and fails to provide that said decree shall be performed in the manner or within the time required by that part of the order which this court affirmed. The said decree does not contain all orders or provisions which are necessary to carry out the purposes of the law, and does not retain jurisdiction of the cause until complete enforcement is accomplished.

Wherefore The Federal Trade Commission moves the court that the said decree be rectified or corrected by incorporating therein the particular terms and requirements of that part of the order which has been affirmed and also by requiring the respondent to submit to this court a plan for its performance of such decree, and that the court make and enter a decree in substantially the form and terms of the proposed decree attached hereto, or that the court will make and enter such orders and decrees as may be necessary to dispose of the merits of this proceeding, and to carry out the purposes of the law, and such other orders and decrees as may be meet and proper in the premises.

A. R. Brindley, Attorney for Petitioner.

Endorsements: 3167. Petition to rectify decree. Received & Filed Apr. 28, 1925. Saunders Lewis, Jr., Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

FEDERAL TRADE COMMISSION, Petitioner *v.* THATCHER MANUFACTURING COMPANY, Respondent	No. 3167

PETITION FOR HEARING

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Thatcher Manufacturing Company, the Respondent in the above entitled case, respectfully requests your Honorable Court that a rehearing be granted upon the decision rendered by the Court on April 16, 1925. The Respondent makes such request after careful reflection upon said decision. The Respondent, while seeking, of course, to protect what it conceives to be its own lawful right, feels also that its obligations in the matter are increased by something in the nature of a public duty resting upon it, in requesting such rehearing.

The Respondent believes that it so happens:

(a) That this case constitutes a leading precedent in a field of considerable public importance.

(b) That it involves an underlying public question as to the powers and jurisdiction, not only of an important public agency, the Federal Trade Commission, but also of the courts themselves.

(c) That the proposed disintegration of the Respondent's business must necessarily have far reaching effect upon the public interest in an important industry.

(d) That if this case shall finally be taken before the Supreme Court of the United States upon certiorari, it is highly desirable that the questions therein be fully presented, free from all obscurity and misapprehension.

(e) Finally it seems to the Respondent that the circumstances of the case do not call for any immediate or summary action and no public interest will suffer by allowing reasonable time for complete consideration.

Having in mind these considerations of public concern, as well as its own private interest, the Respondent believes that this case was so complex, the evidence so obscure, the train of events so difficult to follow, that a peculiar duty rests upon Respondent to make the same clear, and that it has thus far evidently failed in doing so.

It therefore respectfully points out its specific grounds for requesting such re-consideration, as follows:

I.

In the opinion filed by your Honorable Court in rendering the said decision, there appear the following statements: (For the convenience of the Court, the said opinion is attached hereto as Exhibit "1." The pages of the opinion referred to below are the pages of that Exhibit.)

(a) In Exhibit "1," p. 26 as follows —"Baldwin had not contributed to the purchase any money of his own."

(b) On page 28 — "Baldwin did not own the stock because he had never paid any money for it."

(c) On page 27 — " So in the last analysis, the whole purchase price of the stock of the four competing corporations was paid by the Respondent Company with its own funds. * * * The fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for."

The Respondent respectfully represents that the statements above quoted indicate that there were left in the minds of your Honorable Court certain serious misapprehensions as to the true facts — for the following reasons:

It is found in said opinion (page 19) that " Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money." These notes aggregating $1,610,000, represented over three-quarters of the purchase price of the stocks. Of this, Baldwin, for example, had borrowed by such note, $650,000, and this sum was used in part in acquiring the stocks. The Respondent therefore respectfully represents that this money, borrowed in such manner or in any other manner, became, nevertheless, the money of the borrower. Therefore, Mr. Baldwin did use his own money as part of the purchase price. Also, the same is true of the moneys borrowed at the time by Messrs. Libbey and Ford.

So that the Respondent respectfully represents that the source of the great bulk of the purchase money which moved the title from the original owners, came from these three individuals and that the title, therefore, must have passed to them and to their subsequent assignee and contractual successor.

Such alleged misapprehension as to the source of said purchase money was and is vital to the decision of the Court, inasmuch as the Court remarks in the said opinion (page 26) — " When the title left them (the original owners) it went

to somebody else. Who was it? *This question may be answered by finding whose money moved the title from the original owners.*" (Italics by respondent.)

II.

On page 26 of said opinion, it is stated — "The title on leaving the original owners passed to someone else. To whom? *This is difficult to answer and we think it not necessary to answer just now.*" (Italics by Respondent.)

The Respondent further respectfully represents that the foregoing statement just quoted is, it believes, also based upon a misapprehension, resulting mainly from the original misapprehension first above referred to, as to the source of the purchase money. Respondent represents that it is, indeed, necessary to determine to whom that title then passed, in order to determine the nature of the later transaction on July 3, 1920, and that such determination can be arrived at.

The title to the said stocks in the beginning having, in the view of the Respondent, been paid for by money owned and furnished by Baldwin, Libbey and Ford, first passed to these three men. Then, in December 1919, there took place a transformation by virtue of the withdrawal of Libbey and Ford from the transaction. It was the obvious intent and effect of the contract that Libbey and Ford might completely disassociate themselves from the transaction.

Under the express conditions of the contract for such contingency, the only possible result of such withdrawal and disassociation was to place in Baldwin all the equitable rights previously held by Libbey and Ford, because Baldwin, upon such withdrawal, assumed the complete and ultimate liabilities of all parties, including Sterling Com-

pany, for the purchase price. This result was necessary in point of equity, because of such assumption of ultimate liability. The original contract of August 28, 1917 (Transcript p. 37, Exh. "G") provides in Section Third "In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes, or in connection therewith, of each and all the other parties hereto." This, of course, includes an assumption of Sterling's liabilities, because it was one of the "parties hereto." Certainly nothing passed to Thatcher Company by such withdrawal.

The Respondent therefore represents that if it is true, as it alleges, that these stocks were acquired with money belonging to, although borrowed by, the three men in question, then the title to the said stocks was in them, in the first instance, and later, in their successor, Mr. Baldwin, and was certainly not in Thatcher Company and that therefore, Thatcher Company did not and could not have furnished the purchase price of the stocks on July 3, 1920 as stated in said opinion, inasmuch as that price had already (at least the dominating majority of it) been furnished by said three men ten months earlier. And the Respondent therefore represents that the only thing that Thatcher Company did on July 3, 1920 was to furnish to Baldwin the money to pay his notes, which money was the purchase price of the assets of the companies owned by Baldwin and purchased by Thatcher Company.

Respondent asks the indulgence of the Court if it attempts to enlarge briefly upon this transaction of July 3, 1920.

If this procedure had been carried out in full, it would have been as follows:

(a) Baldwin, with the concurrence of his nominee co-stockholders, would have caused each of

the three companies to deed its assets to Thatcher Company. This, indeed, is what was actually done, in the orders issued by these stockholders to the respective companies, as stated below on pp. 7-8.

(b) Thatcher Company would then have paid to each of the companies its proper share of the agreed selling price of such assets ($2,000,000 in all).

(c) These companies, by liquidation dividend, would then have paid this money to Baldwin (their only real stockholder).

(d) Baldwin would then have paid this money to the lending bank to take up his obligations.

Instead of going through this roundabout procedure, Thatcher Company, upon receiving the deeds, turned over the price of the assets direct to the lending bank, thus merely "cutting across lots" to exactly the same final result.

There was nothing improper or evasive in this short-cut method. It occurs in practically every real estate transaction where outside lienors are interested. An adjustment of all credits and debits is made round the table with all parties represented, and the final balances are paid direct.

III.

In said opinion (page 28) it is stated — "The Respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal consideration by 'use' of its control over those corporations and *its control was effected only because of its ownership of their stock.*" (Italics by Respondent.)

Respondent respectfully represents that the foregoing statement is likewise a misapprehension arising out of the earlier misapprehension referred

to, namely, the misapprehension to the effect that the purchase money, because borrowed, did not become the property of the borrowers and was not their money.

And Respondent respectfully represents that inasmuch as the said money did belong to the borrowers; and as the equitable title to the stocks was, in the first instance, acquired by these three men, and later, by necessary force of their contract, passed to their successor, Baldwin, therefore, title was in them and their successor. Therefore, the transfer of assets on July 3, 1920 to Respondent could not have been caused by Respondent through any title which it had to the stocks. But Respondent says that it was caused by Baldwin, who did then have such title, who with his nominees, held the legal record title and actual title, and who alone was able to cause and did cause such transfer of assets to Respondent and did so in consideration for Thatcher Company's furnishing the money to Baldwin to pay his obligations.

And the Respondent further, in support thereof, refers to the transcript of the record which shows that the said transfers of assets were all voted by the stockholders of the three companies *prior* to any payment by Thatcher Company to Baldwin or to the Trust Company in discharge of the notes, as follows:

(a) On *June 7, 1920*, all the stockholders of Travis Company,— Travis, Robinson, Baldwin, Collins and Niver,— requested in writing the Travis Company " to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees " (Transcript p. 63, Exh. " S ").

On *June 12, 1920*, the stockholders of Travis Company unanimously voted to direct the officers to make such transfer (Transcript pp. 63-65, Exh. " T ").

On *June 25, 1920*, the said officers executed such transfer (Transcript p. 66, Exh. " V ").

(b) Exactly similar action was taken by the other two companies as follows:

Request to Essex Company made June 7, 1920 (Transcript p. 67, Exh. " X "). Vote of stockholders June 11, 1920 (Transcript pp. 68-70, Exh. " Y "). Bill of Sale June 17, 1920 (Transcript pp. 70-71, Exh. " Z-1 ").

(c) Request to Lockport Company made June 7, 1920 (Transcript p. 72, Exh. " Z-3 "). Vote of stockholders June 24, 1920 (Transcript pp. 72-77, Exh. " Z-4 "). Bill of Sale June 25, 1920 (Transcript pp. 75-76, Exh. " Z-6 ").

(d) All of the stockholders making these requests and votes were Baldwin and his nominees. In no case was Thatcher Company one of them, as plainly appears in said Exhibits.

So that said votes to sell and said bills of sale were all made and caused by Baldwin and his individual and nominee co-stockholders. And, further, all these votes and bills of sale were made in *June 1920*.

The opinion of the Court is understood by Respondent to hold that the Respondent acquired title to these stocks on July 3, 1920 by paying off the notes. Such prior votes and transfers of assets could not have resulted from such subsequent stock acquisition, because when the votes and bills of sale were made, the Respondent did not in any way control the stock. Respondent, on the contrary, represents that on that date and since December 1919, Baldwin owned and controlled the stock because he paid for it and that these transfers of assets so voted, were caused by him as an inducement or consideration to Thatcher Company to furnish him the money which he used to pay off his note obligations. Or, in other words, that Baldwin, holding such control and being under

such obligations, in fact sold these assets to Thatcher Company for a sum sufficient to pay off the obligations.

Respondent therefore represents that the statement in the said opinion (page 28) above quoted, namely, "The Respondent * * * made this large purchase on merely nominal consideration" is likewise based upon a misapprehension. Respondent actually paid full value of about $2,000,000 on July 3, 1920 for the *assets and properties* which were caused to be conveyed to them by Baldwin who controlled the stocks, in return for the money which Baldwin used in paying off his note obligations.

The documents in the case all deal with a transfer of assets, and none with transfer of stock.

IV.

In said opinion (page 27), it is stated — "Baldwin did not meet these obligations but arranged with the Respondent to do it." Respondent represents that there is a misapprehension appearing in this sentence, if it is intended to mean that Baldwin never actually paid or caused the payment of them directly. Baldwin actually paid in $650,000 out of his own pocket, which he had borrowed. He then assumed all the other obligations; went through a long and anxious period, attempting to secure successful financing; kept Thatcher Company free from all commitments; (see Transcript pp. 198, 218); obtained and fully exercised complete control over the three companies and finally, having succeeded in procuring the necessary financial backing, caused the three companies which he controlled, to sell their assets to Thatcher Company to obtain the money for liquidating the note obligations. Thus he did, by his own money and credit, and through his own unaided financing, meet these obligations, by sell-

ing the *assets* of the companies which he controlled.

V.

Summarizing the foregoing representations of the Respondent, they all are directed in substance at one absolutely vital point, so recognized by the Court in its opinion, namely, the question of who furnished the purchase money and therefore acquired the title to the stocks?

The Court recognizes that the stocks were acquired by someone on August 28, 1919 (opinion, pages 19 and 26). On that date, there was paid out three-fourths of the total purchase price by Libbey, Baldwin and Ford — borrowed it is true — but still necessarily their property.

Title to the stocks having thus passed originally, must have been in some person or persons until July 3, 1920. It could not remain in vacuo. Thatcher Company during that period paid out in all only $500,000 or less than one-quarter of the purchase price. The balance, therefore, $1,610,000 came from elsewhere. Respondent represents that this must be attributed to Libbey, Baldwin and Ford who borrowed it. But in any event, it *did not* come from Thatcher Company during those ten months. Therefore, during those ten months, title was definitely in someone and *not* in Thatcher Company. It could only have been in those three men who borrowed and furnished the money and who later certainly caused the legal and record title to be placed in Baldwin alone and thus finally gave him complete control.

Baldwin then demonstrated this control

(a) By naming the new stockholders.

(b) By naming the directors and officers.

(c) By a long and finally successful financing campaign.

(d) By making the bond agreement, which

was made by him and not by Thatcher Company.

Therefore, when Thatcher Company finally furnished the money to Baldwin to pay the notes, it had not supplied the original purchase price. This had been supplied ten months earlier — it must have been in order to move the title out of the original owners. All that Thatcher Company did was to purchase from Baldwin the assets of the companies. It was not, however, the same thing as supplying the purchase money, which is a very different thing.

Respondent represents that the fact that the title to the stocks was first in the three men and then in Baldwin alone, makes their conduct plain. Otherwise, it is wholly inexplicable. Otherwise, why should Baldwin, Libbey and Ford involve themselves in an undoubted joint liability for $1,610,000? Why should Baldwin sign a contract to assume, under contingencies (which did occur), all this great liability? Why should these stocks all be re-issued to his nominees? Why should he name the directors and officers? Finally, how could Thatcher Company, if it acquired title to stock on July 3, 1920 (which is denied), cause a transfer of assets which was voted in the preceding month?

VI.

Respondent further respectfully represents that it is true that the evidence in part indicates that Mr. Baldwin thought that Thatcher Company acquired equitable ownership of the stocks after July 3, 1920. But Respondent, in this respect, represents that such statements by Baldwin were simply a careless use of inexact language, referring to a negligible question and that he meant that Thatcher Company, by the purchase of assets, then secured everything that the stocks represented, and that the stock certificates, merely

waste paper then, came along with the rest. In fact, no one knew what had become of them.

At all events, it is of little consequence what Baldwin said. The question is, what did Thatcher Company do? The documentary evidence on this point expressly refers only to assets.

VII.

In said opinion, on page 27, it is stated — "In this situation, the Respondent was operating the four companies * * * and receiving financial returns from some of them." Respondent respectfully represents that it was not at the time referred to, " receiving financial returns " in the sense of any participation in the profits of these other companies, but that all that it did receive was an ordinary business loan from one of them (Transcript p. 164). There were only ordinary credit and debit transactions between these companies, and nothing indicating any right to profits or dividends.

VIII.

On page 29 of said opinion, it is stated:

> " We are of opinion that the Respondent acquired the stock of the Essex, Travis, and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent."

The Commission in its findings (Transcript page 242, paragraph 25) expressly found as follows:

> "All competition between the Respondent and the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies."

The Respondent understands the said opinion to decide that the respondent acquired the stocks of the said companies on July 3, 1920. The Respondent respectfully represents that upon the above quoted facts so found by the Commission, such acquisition, coming six months after the complete cessation of all competition, could not therefore have had any of the effects upon commerce which are prohibited by the statute and which must exist to constitute a violation thereof.

And the Respondent, following its argument earlier set forth herein, respectfully represents that no illegality as to the Respondent resulted by reason of the said cessation of competition on January 1, 1920, because such cessation was caused by those individuals who prior thereto had title to and controlled the said stocks, to wit: first Baldwin, Libbey and Ford, and then Baldwin, their contractual successor. The Clayton Act does not apply to them. And the Thatcher Company, if it did acquire the stocks on July 3, 1920 (which is denied), merely took over a situation already lawfully established, and did not produce or cause it.

IX.

If there has been any violation of law it has not been a violation of the Clayton Act, because the whole transaction deals with assets so far as

Thatcher Company is concerned, and not with stock. Any remedial action directed at assets must be in the District Court.

WHEREFORE the Respondent respectfully prays that it may be granted a rehearing before this Honorable Court upon the question above discussed.

THATCHER MANUFACTURING COMPANY

by WILLIAM W. PORTER and
HERBERT KNOX SMITH,
Attorneys for Respondent.

We hereby certify that the foregoing petition in our opinion is well founded and is made in good faith and not for the purpose of delay or any ulterior purpose.

WILLIAM W. PORTER,
HERBERT KNOX SMITH,
Attorneys.

EXHIBIT I

OPINION

In the United States Circuit Court of Appeals for the Third Circuit

FEDERAL TRADE COMMISSION, Petitioner *v.* THATCHER MANUFACTURING COMPANY, Respondent	No. 3167

OCTOBER TERM, 1924

On Application for Enforcement of an Order of the Federal Trade Commission

Before BUFFINGTON, WOOLLEY and DAVIS, Circuit Judges.

WOOLLEY, Circuit Judge. The Federal Trade Commission asks this court to enforce an order it has made against the Thatcher Manufacturing Company, the respondent, commanding it to cease and desist from the ownership and control of the assets and properties of three corporations which it obtained through its acquisition of their capital

stock, to divest itself of the assets and properties so acquired, and to divest itself of the stock or share capital of a fourth corporation. The proceedings were begun by a complaint filed by the Commission under Section 7 of the Clayton Act (38 Stat. 730) charging the respondent, first with the acquisition of the entire capital stock of four competing corporations, and, next, with its acquisition of all the assets and properties of three of those corporations through its stock control, the effect of which was substantially to lessen competition, restrain commerce and create in the respondent a monopoly in the business of manufacturing milk bottles. The order was made on elaborate findings of fact based mainly on a stipulation as to facts entered into by the parties and on other matters obtained from records which the respondent freely opened and made available. There is therefore little dispute about the facts and no trouble in deciding that the Commission's findings are, except in one matter, sustained by the evidence. The controversy turns on the inferences properly to be drawn from the facts and therefore on the single question whether the transactions were in violation of Section 7 of the Clayton Act. As they were highly complicated we shall, in stating the case, give only enough to show their character and effect.

Of the corporate actors in this case the Thatcher Manufacturing Company, the respondent, is a corporation of the State of New York with its principal office and manufacturing plant at Elmira, New York and branch manufacturing plants in West Virginia and Ohio. It was enengaged in the manufacture of milk bottles by automatic bottle-blowing machines under an exclusive patent license from the Owens Bottle Company.

The Essex Glass Company was a corporation of the State of Ohio having its principal office at

Mount Vernon, Ohio, and plants in Ohio and West Virginia.

The Travis Glass Company was a corporation of the State of West Virginia with its principal office and manufacturing plant at Clarksbury, West Virginia, and a branch plant at Cedar Grove, West Virginia.

The Lockport Glass Company was a corporation of the State of New Jersey with its principal office and manufacturing plant at Lockport, New York.

The Woodbury Glass Company is a corporation of the State of Indiana with its principal office and manufacturing plant at Winchester, Indiana.

The J. T. & A. Hamilton Company was a corporation of the State of Pennsylvania with its principal office and manufacturing plant at Pittsburg, Pennsylvania.

All these corporations were engaged in manufacturing milk bottles and selling them in interstate commerce in competition with one another and with other concerns similarly engaged.

The Owens Bottle Company was a corporation of the State of Ohio, with factories in Ohio, West Virginia and Indiana, and was engaged in the manufacture and sale of glassware but not in the manufacture of milk bottles. It had acquired the exclusive right to use the Owens bottle-blowing machines in the United States and had granted the respondent an exclusive license under the patents for the manufacture of milk bottles.

In 1917 the Hartford-Fairmont machine appeared in the art. This was another automatic bottle-making machine and it quickly demonstrated that it was the equal and in some respects the superior of the Owens machine. These two were the only successful entirely automatic bottle-making machines then in use. Exclusive licenses to

use the Hartford-Fairmont machines for manufacturing milk bottles were secured by the Essex, Travis, Lockport and J. T. & A. Hamilton Companies. The Woodbury Company secured a non-exclusive license to use the Hartford-Fairmont machines for making bottles of other kinds.

Early in 1919, I. T. Axton, president of the Woodbury Company, conceived a plan of merging the Woodbury Company with the companies that held Hartford-Fairmont licenses. Axton controlled the common stock of the Woodbury Company and secured options on the entire capital stock of the Essex, Travis and Lockport Companies and an option on the machine, license and milk bottle business of the J. T. & A. Hamilton Company. Failing in his attempt to merge these corporations, Axton approached F. E. Baldwin, president of the respondent corporation, and suggested that he take over his options and carry out the merger. Baldwin consulted H. C. Mandeville, a director of the respondent, and also E. D. Libbey, president of the Owens Bottle Company, to that end. The Owens Bottle Company offered no objection to the plan and, being interested in competitive bottle-making machines, Libbey agreed to go into the deal and assist in raising the necessary money, provided he could acquire the Hartford-Fairmont patents. Baldwin, Mandeville and Libbey then took over the Axton options and proceeded to exercise them. Up to this time the respondent had not appeared in the transaction. This was in August 1919; the options expired on September 1, following. With some haste Mandeville secured the incorporation of the Sterling Glass Company, Inc. to serve as a temporary means through which to exercise the options and effect the merger. This company was incorporated under the laws of New York with an authorized capital of $600,000. Stock of $500,000 was issued

at par for cash. One half of its issued capital stock was taken by E. D. Libbey and the other half by the respondent. The sum of $2,110,000 in cash was required to carry out the options. Of this, $500,000 was available from the Sterling Company. The balance, or $1,610,000, Baldwin, Libbey and William Ford, the latter a business associate of Libbey, arranged to borrow from the Guaranty Trust Company of New York on their individual promissory notes, each note to be endorsed by the makers of the other two so that all were equally liable. On August 28, 1919, the stockholders of the Essex, Travis, Lockport and Woodbury Companies and Baldwin, Libbey and Ford met at the office of the Guaranty Trust Company. The precise order of the events which followed is difficult to ascertain. They were in substance as follows: Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money which they turned over to the Sterling Company, and the Sterling Company, then being in possession of the full purchase price, paid the same to the holders of the stock of the Essex, Travis, Lockport and Woodbury Companies and received their certificates endorsed in blank, which it turned over to the Trust Company as collateral security for the notes. With the balance of the money, the Sterling Company (or Baldwin) paid for the outright purchase of the machines, license and rights of the Hamilton Company. As the order under review does not require the respondent to divest itself of the physical properties purchased from the Hamilton Company, we shall not consider the part of the transaction affecting that company nor shall we mention it except when necessarily incidental to the other phases of the transaction.

Immediately after the capital stock of the four companies had thus been acquired, Baldwin ap-

peared before the vendors and requested the officers of the four companies to remain in their respective positions and continue the operation of the companies until further directed. The respondent controlled these corporations under their respective managements until January 1, 1920, when their entire business was taken to Elmira and thereafter managed directly by the respondent. After the capital stock of the Essex, Travis, Lockport and Woodbury Companies had been acquired, Baldwin, Libbey, Ford and the Sterling Company entered into an agreement in which, by preamble, they stated that it was their purpose at a later date to organize a permanent company to take over the plants and assets of the four companies together with the plants and assets of the respondent, and to that end they agreed that the Sterling Company should save harmless the other parties to the agreement from all liability arising from the notes and that " upon the payment of the said notes all of the collateral thereto shall become the property of the Sterling Company;" that if Libbey should not acquire the Hartford-Fairmont patents, or if the parties should fail to agree upon the form, capitalization, or organization of the permanent company, Libbey and Ford might at any time, on notice to Baldwin, retire from the agreement; that in the event of their retirement, Baldwin should assume all liability under the contract and all liability upon the notes and repay Libbey the $250,000 he had invested in the capital stock of the Sterling Company; and that, thereafter, Baldwin should proceed with the organization of the permanent company in such manner as he might see fit.

Shortly after entering into this agreement Libbey found that he could not acquire the Hartford-Fairmont patents and thereupon served notice on Baldwin of his intention, and the intention of Ford, to retire from the transaction. On

the retirement of Libbey and Ford the plan for a permanent corporation, into which all the companies including the respondent were to be merged, came to an end and a new situation arose in which there were outstanding individual obligations of Baldwin, Libbey and Ford amounting to $1,610,000 due the Trust Company, the obligation of Baldwin to buy Libbey's $250,000 of stock in the Sterling Company and his obligation to assume Libbey's and Ford's indebtedness. There was also outstanding an obligation on the part of the Sterling Company to save harmless all the parties to the agreement from all liability arising from the making and endorsing of the notes. The Sterling Company had no money, for it had expended its whole capital of $500,000 in supplying a part of the purchase money for the stock of the four companies. Here the respondent again entered the transaction and gave the Sterling Company $250,000 with which it took up Libbey's stock and received the certificates. The respondent then held $500,000 of the full paid capital stock of the Sterling Company, all of which had entered into the purchase of the stock of the competing companies. With the Trust Company loan unpaid, the certificates for the stock of the Essex, Travis, Lockport and Woodbury Companies (held by the Trust Company as collateral) were sent to Elmira and there formally cancelled and new certificates issued to persons nominated by Baldwin, and then, on being endorsed in blank, they were delivered to the Trust Company as collateral security for the loan. All the new certificates were issued to four persons, Baldwin, Mandeville, Niver and Collins, officers and employees of the respondent corporation. Baldwin was elected president and Collins secretary of the four companies. None of the persons to whom the stock was issued paid any money for it or gave any other consideration.

The relation of the respondent with the four companies continued financially intimate. It advanced $10,000 to the Woodbury Company and $25,000 to the Travis Company, and received $75,000 from the Essex Company which it mingled with its funds and treated as its own. In an annual report which Baldwin made to the stockholders of the respondent corporation he referred in terms of congratulation to the merging of the Essex, Travis, Lockport and Woodbury Companies with the respondent and its purchase of the Hartford-Fairmont milk bottle machine and business of the Hamilton Company. Without quoting this communication it is enough to say that it states without doubt that the transactions of purchase and merger were made by the respondent corporation and were greatly to its financial advantage.

The indebtedness upon the three notes given by Baldwin, Libbey and Ford was still running, and in order to meet it when it should mature an agreement was made by Baldwin with two bond houses of New York. This agreement provided that the respondent should acquire all "the assets and business" of the Essex, Travis and Lockport Companies and all the shares of stock of these companies then owned by the Sterling Company (all the stock of the latter company being owned by the respondent), and that it should also acquire all the common stock of the Woodbury Company then owned by the Sterling Company, and that the respondent should assume all the obligations of all these corporations and that, thereafter, they should be dissolved. It was further agreed that the respondent should increase its capitalization from $1,000,000 to $1,625,000 and should issue $2,000,000 of bonds to which the bond houses would prescribe. All this was eventually, and contemporaneously, carried out at a meeting at which all interested parties were present. At

this meeting the Essex, Travis and Lockport Companies, by separate bills of sale, for the consideration of one dollar, conveyed all their property and assets of every kind to the respondent. The respondent delivered to the bond houses $2,000,000 of bonds secured by its mortgage or deed of trust covering all the property which it originally owned and all the property which it had just acquired by the bills of sale. The bond houses paid the respondent for the bonds. With this money the respondent paid the Trust Company the amount due upon the Baldwin, Libbey and Ford notes, and the Trust Company surrendered the shares of the four companies which it held as collateral. Some days later the Essex, Travis and Lockport Companies (together with the Sterling Company) were dissolved. The stock of the Woodbury Company was delivered as additional security for the bonds. In due course the bonds were called and retired and the mortgage or deed of trust given to secure them was cancelled. The respondent now holds the entire common capital stock of the Woodbury Company, and all the properties of the Essex, Travis and Lockport Companies free of the lien of the mortgage or deed of trust and free of any obligation arising from the recited transactions.

The provision of Section 7 of the Clayton Act which the Federal Trade Commission found that the respondent corporation had violated reads as follows:

> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or

other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The Commission found that the respondent had violated this section by its "acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and in the subsequent developments and transactions stated in these findings consisting mainly of the "transfer and conveyance to the respondent of the assets, rights and properties" of these companies, and their subsequent dissolution, and held that "these were an artifice and subterfuge of the respondent to evade the provisions of the said Act of Congress and to escape the penalties thereof." The respondent, on the other hand, thought it discerned in the Clayton Act a difference between the acquisition of stock of a competing corporation and the acquisition of its physical properties and, accordingly, conducted the transactions along the line of that theory. It now complains that the Federal Trade Commission, by its order and by its petition here presented for its enforcement, is endeavoring to enlarge the words and expand the meaning of Section 7 of the Act from the acquisition of stock of a competing corporation, which in terms is prohibited, to the acquisition of property of a competing corporation, which is not prohibited in terms. However this may be, the record in this case does not raise a question involving this distinction but presents squarely the question whether by the transactions recited the respondent, in violation of the literal terms of the provision, did "acquire, directly or *indirectly*," the stock of two or more corporations, "where the *effect* of such acquisition, or the

use of such stock by the voting or granting of proxies or *otherwise*, may be " to bring about the forbidden situation in commerce.

For defense on this issue the respondent admits, of course, that it acquired the physical properties of the named competing corporations but denies that it ever acquired their stock, directly or indirectly. It takes the position that the adventure was Baldwin's; that it was mainly with money borrowed on the credit of his name that the stock was bought; that on the withdrawal of Libbey and Ford the whole liability for meeting the notes and the whole responsibility for putting through the transaction were his; that the stock was transferred from the vendor holders to his nominees; that the shares were never transferred to the respondent nor was there ever any record evidence of its ownership; that the stock and the administration of the purchased corporations were likewise within the control of Baldwin to do with as he might see fit; that the most the respondent acquired in respect to the stock of the several corporations was the equitable title *after* these corporations had conveyed all their assets and properties to it; and that these conveyances made the stock whose equitable title the respondent had thus acquired valueless, because no assets or properties of any kind stood behind it. And finally, the respondent contends that the Act was not violated because the stock *when* acquired was not the stock of *competing* corporations within the sense of the Act because these corporations in disposing of their physical property to the respondent had also sold to it their licenses for bottle-making machines, without which they were not then able to do business and compete in commerce.

We have not been persuaded to this view of the transaction. To obtain the correct view we shall look at the transaction through the eyes of the

statute. Primarily at least the statute (Section 7) deals with acquisition of stock of one corporation by another; in terms it is silent as to the acquisition of property of one corporation by another. So, in this case, we shall look for stock acquisition, not for acquisition of property. Acquisition, as that word is used in the statute, means ownership; ownership involves title; and title is of two kinds, legal and equitable. In inquiring into the respondent's ownership of the stock of the four companies we shall look at the title of the stock and follow it through its devolution. In doing this we first find title in the original unnamed owners who for money considerations sold their shares and divested themselves of all title. When the title left them it went to somebody else. Who was it? This question may be answered by finding whose money moved the title from the original owners. Of this money $500,000 was that of the Sterling Company, given it by the respondent and Libbey for the express purpose of buying these shares. The balance of the purchase money was obtained from the Trust Company by Baldwin, Libbey and Ford on their personal notes. On payment for the stock the original owners delivered the certificates endorsed in blank for negotiable purposes. Delivered them to whom? This is not clear; but it is clear that, on delivery, the certificates were lodged with the Trust Company as collateral security for the loan to Baldwin, Libbey and Ford and that the title on leaving the original owners passed to someone else. To whom? This is difficult to answer, and we think not necessary to answer just now, for the reason that the transaction of purchase had not been completed and was then, by the terms of the agreement, liable to transformation, as afterwards occurred. Baldwin had not contributed to the purchase any money of his own although admittedly the purchase money was in part raised on the

credit of his name and in part with funds of the Sterling Company, a subsidiary of the respondent. Whether Baldwin and the Sterling Company thus became part owners of the legal or equitable title of the shares is also unnecessary to decide, for the next thing that happens was the transfer of the stock (while still held by the Trust Company as collateral) from the names of the original owners to names of men mentioned by Baldwin, of whom he himself was one. Concededly the other three men had contributed nothing to the stock purchase and never had title in themselves, unless indeed, they held title for the real owners of the shares, whoever they were.

In this situation the respondent was operating the four companies from its central office, directing its affairs, making financial contributions to and receiving financial returns from some of them.

The next event touching title was the withdrawal of Libbey and Ford from the transaction, leaving Baldwin or someone else to pay their notes when they matured. Baldwin did not meet these obligations but arranged with the respondent to do it. And this the respondent did by first augmenting its assets by acquiring the physical assets and license rights of the three competing corporations and the common stock of the fourth and issuing its bonds for $2,000,000 secured thereby, and with the proceeds of the bonds paying the personal indebtedness of Baldwin, Libbey and Ford. Thus the respondent with its own money directly supplied the larger part of the purchase money, and with its own money, through the Sterling Company, indirectly paid the balance of it. So in the last analysis the whole purchase price of the stock of the four competing corporations was paid by the respondent company with its own funds. While throughout the transaction Baldwin and the respondent kept the name of the respondent off

the certificates for the shares of the four companies, the fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for. It is difficult to see how the use of the respondent's money in the purchase of the shares did not draw to it the ownership of the shares. The interposition of the Sterling Company, created by the respondent to spend its money in the purchase, was not the act of a legal entity which can blind the court to the real transaction or bar the operation of the statute. "Courts of equity will look behind a corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice." United States *v.* United Shoe Machinery Company, 234 Fed., 127; 258 U. S., 451; Brown *v.* Pennsylvania Railroad Company, 235 Fed., 669; 250 Fed., 513. "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." United States *v.* Milwaukee Refrigerator Transit Company, 142 Fed., 247.

The respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal considerations by "use" of its control over those corporations, and its control was effected only because of its ownership of their stock. Baldwin did not own the stock because he had never

paid any money for it. If, however, the shares belonged to Baldwin by virtue of their purchase with money partly raised on his note, then the shares still belong to him, for there is no evidence that he has sold them to the respondent. Yet the respondent admits that it holds the equitable title to the shares for the reason that finally the shares were paid for with its money.

Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

To carry out the purpose of the statute the Commission therefore made an order commanding the respondent (a) to cease and desist from the ownership and control of the assets and properties of the three corporations it had acquired through its acquisition of their stock; (b) to divest itself of the assets and properties thus acquired and of the control of the said stock; and (c) to submit for the approval of the Commission a plan for the performance of the order, jurisdiction for that purpose being retained. The respondent maintains that, aside from the merits of the case, the order is invalid first, in that it exceeds the powers conferred upon the Commission by the Act, and second, in that it is, in the circumstances, impossible of performance. It bases its contention first on the statute which it says limits the authority of the Commission to a command addressed to the

offending corporation to divest itself of the "stock" of another corporation acquired in violation of the Act, and next on the difficulty, or impossibility, of dissassembling the assets of the corporation acquired from assets of its own. On the first position we hold that the Act is remedial, not punitive. Western Meat Company *v.* Federal Trade Commission, 1 Fed. (2d), 295, rehearing Fed. . Therefore the sole purpose of a valid order of the Commission must be to remedy an unlawful situation. In effecting the remedy, however, the Commission must meet the situation as the offending corporation has made it. If it created the situation so as to defeat the statute, the offending party cannot be heard to say that thereby the Commission is helpless and the law unenforcible. The familiar principle that a person can not profit by his own unlawful act applies. Not in every case can the Commission reach property acquired through stock acquisition, but where, as in this case, the offending corporation has stripped the stock of its value and where, accordingly, the mere divesting itself of the stock would leave the corporation in full possession of the entire fruits of the forbidden transaction, we are of opinion that the statute empowers the Commission to carry out its purpose by extending its hand to the property. Nor do the acts of the offending corporation in commingling the assets of the corporation whose stock it has acquired in violation of the statute with assets of its own raise a legal barrier against remedying an evil which the law was expressly enacted to prevent. Just how, in a practical way, this shall be done in the case at bar the Commission purposely left open by the last paragraph of the order which directed the respondent to submit a plan to that end. As no plan has been submitted, none is before us. Therefore,

with the way to do the thing we are not presently concerned.

The order of the Commission is so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company is approved and its enforcement directed.

Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The Act, by express terms, says that Section 7 does not apply to a corporation "purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition." Testing the transaction (as it affected the Woodbury Company) by the whole of Section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whiskey bottles and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over 1,000,000 gross. The evidence also shows that it was gradually getting out of the milk bottle business and that, indeed, before the transaction in question arose it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a non-exclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars, and glassware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged and therefore in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk

bottles and accordingly to end its competition in milk bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are therefore of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened competition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is therefore not approved and will not be enforced.

BUFFINGTON, J.

In view of this case involving a far reaching question of jurisdiction I note my dissent. The original purpose Baldwin had in view, and which he finally carried out, was the acquisition and absorption of the several corporations involved by the purchase of their entire properties. If, in so doing, he suppressed competition the remedy for such wrong was vested in the courts and not in the trade commission.

The necessity for the prompt exercises of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock acquisition plan, but in my judgment the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock, and jurisdiction over it, if amenable to the law, was vested in the Federal Courts and not in the Federal Trade Commission. Such being my view I feel it my duty to respectfully record my dissent.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

v.

THATCHER MANUFACTURING COMPANY, Respondent

ANSWER TO RESPONDENT'S PETITION FOR REHEARING

A. R. Brindley, Attorney for Petitioner. W. H. Fuller, Chief Counsel, Federal Trade Commission.
Received & Filed May 25, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

v.

THATCHER MANUFACTURING COMPANY, Respondent

ANSWER TO RESPONDENT'S PETITION FOR REHEARING

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Federal Trade Commission, answering the petition for a rehearing upon the decision rendered by this Court on April 16, 1925, respectfully submits that the petition should be denied.

The petition, on the first page, asserts that the respondent, in requesting a rehearing, feels an obligation in the nature of a public duty. Five reasons, numbered (a), (b), (c), (d), and (e), are thereupon set out on pages 1 and 2, and the petition continues:

Having in mind these considerations of public concern, as well as its own private interest, the respondent believes that this case was so complex, the evidence so obscure, the train of events so difficult to follow, that a peculiar duty rests upon respondent to make the same clear, and that it has thus far evidently failed in doing so.

Not one of the five reasons, nor the statement just quoted, constitutes a legal ground for a rehearing. To entitle a party to a rehearing there must be manifest error in the opinion, and a rehearing will be refused if no material fact or principle of law has been

overlooked or disregarded. (4 Corpus Juris, sec. 2480.) The failure of counsel sufficiently to present the cause for the determination of the Court furnishes no ground for a rehearing (4 Corpus Juris, sec. 2488), and a rehearing will not be granted solely because questions of great importance are involved. (4 Corpus Juris, sec. 2492.) The authority just cited (4 Corpus Juris) states the rule on page 629, note (81a), as follows:

> In the United States Circuit Court of Appeals rehearings will not be granted on the ground that the case is of great importance, unless there is also a suggestion that some controlling authority has been overlooked, and this is especially true where the decision is subject to review by the Supreme Court. Camfield v. U. S., 67 Fed. 17, 14 C. C. A. 228.

The petition states no legal ground for a rehearing, advances no new question of law or fact, and cites no authorities. Every question presented by the petition, every conclusion now urged by the respondent, was fully presented to this Court in the brief and oral arguments and doubtless received the consideration to which, in the opinion of the Court, it was entitled. Reiteration adds no force or persuasiveness.

On page 7 of its original brief, under the title "First Defense," the respondent made the following assertions:

> The legal issues themselves are few and rather elementary. * * * The burden is upon the petitioner to show acquisition of stock, with the resulting evils denounced by the Clayton Act. The facts in this case are not in any substantial dispute. The issues arise as to the interpretation of said facts, the conclusions drawn from them, and the law to be applied to them. (Respondent's brief, p. 7.)

The duty upon the Court was met promptly. It passed upon facts which "are not in any substantial dispute," determined legal issues which "are few and rather elementary," and decided that the "burden upon the petitioner to show acquisition of stock with the resulting evils denounced by the Clayton Act" was sustained by the testimony. Yet the respondent now seems displeased and seeks a rehearing upon the same facts, the identical issues, and a reiteration of its conclusion and arguments.

The petition, with slight regard to sequence, makes desultory quotations from the opinion of the Court and seeks to demonstrate conclusions in line with its defense by reiterating former arguments. None of these conclusions, as the Court decided, is sustained by testimony. Some of them will be mentioned, and the testimony in the record disproving them will be cited.

On page 3 of the petition it is recited:

> So that the respondent respectfully represents that the source of the great bulk of the purchase money which moved the title from the original owners came from these three individuals (i. e., Baldwin, Libbey, and Ford), and that the title, therefore, must have passed to them and to their subsequent assignee and contractual successor.

Who was the subsequent assignee and contractual successor of Baldwin, Libbey and Ford? To whom did Baldwin, Libbey and Ford assign or convey any rights or assets? Not a single transfer, assignment, or conveyance was made by either of them to any person, except that Libbey transferred his half of the stock of the Sterling Glass Company to the respondent, the respondent paying Libbey therefor and becoming thereby the owner of all the stock of the Sterling Company. (Tr. pp. 138, 158, 159.)

The petition on page 5 thereof recites:

And the respondent therefore represents that the only thing that Thatcher Company did on July 3, 1920, was to furnish to Baldwin the money to pay his notes, which money was the purchase price of the assets of the companies owned by Baldwin and purchased by Thatcher Company.

On page 11 of the petition it is also recited:

Therefore, when Thatcher Company finally furnished the money to Baldwin to pay the notes, it had not supplied the original purchase price. This had been supplied ten months earlier—it must have been in order to move the title out of the original owners. *All that Thatcher Company did was to purchase from Baldwin the assets of the companies.* [Italics supplied.]

These statements are not authorized by the record. There is not a deed, bill of sale, transfer, or assignment from Baldwin to respondent. All the deeds and bills of sale were executed to respondent by the Sterling, Essex, Travis, and the Lockport companies. (Exhibit F, p. 58; Exhibit V, p. 66; Exhibit Z-4, p. 70; Exhibit Z-6, p. 75.) If the last-quoted statement is true, it is queer that the attorneys for both respondent and the bond buyers thought title rested in respondent, with no conveyance from Baldwin.

Paragraph II of the petition, on pages 4 and 5, contains the following:

Under the express conditions of the contract for such contingency, the only possible result of such withdrawal and disassociation was to place in Baldwin all the equitable rights previously held by Libbey and Ford, because Baldwin, upon such withdrawal, assumed the complete and ultimate liabilities of all parties, including Sterling Company, for the purchase price.

That theory was presented to the Court in respondent's brief and oral arguments. Time has not improved its flavor, and it is as incorrect now as it was then. Baldwin did not assume the liability of Libbey and Ford, nor the liabilities of the Sterling Company, when Libbey and Ford withdrew. The respondent assumed all the liabilities and paid all the obligations. The record shows (Exhibit X) a letter from respondent, by Baldwin, its president, to Sterling Glass Company stating the desire to have the Sterling Company dissolved and its assets and property assigned to respondent. That letter states that "upon such a transfer the Thatcher Manufacturing

Company will assume and pay all debts and obligations of the Sterling Glass Company, Inc., *including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.*" [Italics supplied.] The assumption by the respondent and the transfer to it of all rights, interests, and obligations under the contract of August 28, 1919, are recited in the conveyance from Sterling Company to respondent (Exhibit P, p. 58).

In Paragraph VI, on page 11, the petition recites (italics supplied):

Respondent further respectively represents that it is true that the evidence in part indicates that *Mr. Baldwin thought that Thatcher Company acquired equitable ownership of the stocks after July 3, 1920.* But respondent, in this respect, represents that such statements by Baldwin were simply *a careless use of inexact language*, referring to a negligible question, and that he meant that Thatcher Company, by the purchase of assets, then secured everything that the stocks represented, and that the stock certificates, merely waste paper then, came along with the rest. In fact, no one knew what had become of them.

That is a remarkable statement. It is true that the evidence shows that Baldwin thought that Thatcher Company acquired the ownership of the stocks. But he did not think the Thatcher Company acquired ownership of the stocks after July 3, 1920. Baldwin's annual report to respondent's stockholders (Exhibit K) was made February 18, 1920, almost five months prior to July 3, 1920. In that report Baldwin stated:

Upon the 29th day of August we purchased the capital stock of the companies named.

and also that

The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company, and Mr. William Ford, a large stockholder in the Owens Company. (Exhibit K, p. 43.)

Again, on April 10, 1920, almost three months prior to July 3, 1920, Baldwin made his contract with the bond buyers (Exhibit L), and recited therein that—

All of the shares of stock of said companies (i. e., Travis, Essex, and Lockport Companies) being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation. (Exhibit L, p. 47.)

These statements are plain and direct and were made in official written documents months prior to July 3, 1920, and they were not "simply a careless use of inexact language." They show that Bald-

win knew that the respondent had acquired the stock of the companies. At the time Baldwin made these written statements, the assets of the companies had not been purchased. The statement made in the petition that "he meant that Thatcher Company, by the purchase of the assets, then secured everything that the stocks represented" is an impossibility.

The petition, in Paragraph IX, recites that—

> If there had been any violation of law, it has not been a violation of the Clayton Act, because the whole transaction deals with assets so far as Thatcher Company is concerned, and not with stock. Any remedial action directed at assets must be in the District Court

The opinion of the Court is to the contrary, for it recites:

> Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis, and Lockport companies in a manner inhibited by Section 7 of the Clayton Act. * * * We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

The suggestion that remedial action must be in the District Court is an after-thought, now injected for the first time. It ignores Section 11 of the Clayton Act, which provides that the jurisdiction of the Circuit Court of Appeals to enforce, set aside, or modify orders of the Commission shall be exclusive.

In Paragraph VIII, on page 13 of the petition, respondent quotes from the Commission's findings and then presents an argument which is taken from page 55 of respondent's original brief. Both the brief and the petition overlook the fact that an argument similar to the one advanced on page 13 of the petition was rejected by this Court in the Aluminum Case (284 Fed. 401).

The Federal Trade Commission respectfully submits that the petition for a rehearing should be denied, and the respondent referred to its remedy in the Supreme Court.

A. R. Brindley, Attorney for Petitioner. W. H. Fuller, Chief Counsel Federal Trade Commission.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING CO., Respondent

Sur Petition for Rehearing

And now, to wit, June 2, 1925, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, —— — , ——.

Per Curiam.

Endorsements: 3167. Order Denying Petition for rehearing Received & Filed Jun. 2, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1923

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

The motion of counsel for the Federal Trade Commission to reform the order of this Court lately made in Federal Trade Commission vs. Thatcher Manufacturing Company is denied and the motion of counsel for the Thatcher Manufacturing Company for a stay of the decree to enable the respondent to apply for and obtain a writ of certiorari from the Supreme Court is granted, the stay to extend to the 15th of October next, and if, before that date, the Thatcher Manufacturing Company has filed its petition for writ of certiorari with the Supreme Court, then until the Supreme Court has disposed of the same.

Victor B. Woolley

June 12, 1925.

Endorsements: 3167. Order denying petition to rectify decree and staying mandate to 10/15/25. Received & Filed June 12, 1925. Saunders Lewis, Jr., Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, William P. Rowland, Deputy Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings of this Court in the case of Federal Trade Commission, Petitioner, vs. Thatcher Manufacturing Co., Respondent, No. 3167, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 2nd day of September, in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and fiftieth.

Wm. P. Rowland, Deputy Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 26, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(611)

Office Supreme Court, U. S.
FILED
SEP 4 192
WM. R. STANSBURY
CLERK

No. 7[redacted]213

In the Supreme Court of the United States

OCTOBER TERM, 1925.

THATCHER MANUFACTURING COMPANY, PETITIONER,
v.
FEDERAL TRADE COMMISSION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1925

THATCHER MANUFACTURING COMPANY Petitioner *v.* FEDERAL TRADE COMMISSION Respondent	No. 721.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

The Thatcher Manufacturing Company, a corporation of New York, prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Third Circuit, in the case of the Federal Trade Commission, Petitioner against the Thatcher Manufacturing Company, Respondent.

THE FACTS

1. The chief issue in this matter involves the power of the Federal Trade Commission to make or enforce an order requiring a corporation to divest itself of assets *other than capital stock*. The order was made under Section 11 of the Clayton Act. That Section (omitting irrelevant language) confers upon the Commission only the power;

To require "such person to cease and desist from such violations and divest itself of the stock held * * * in the manner and within the time fixed by said order."

2. In 1920 Thatcher Manufacturing Company had acquired all the assets (plants, equipment, accounts, business, etc.) of three other companies which were then competing in

interstate commerce with Thatcher Company and with each other. These three other companies were shortly thereafter dissolved, and their capital stocks are no longer in existence. The said dissolution took place all prior to January 15, 1921 and prior to the beginning of any action by the Commission against Thatcher Company.

3. In July 1924 the Federal Trade Commission brought suit in the United States Circuit Court of Appeals for the Third Circuit to enforce a certain order issued by said Commission against the Thatcher Company, under said Section 11 of the Clayton Act. Said order directed Thatcher Manufacturing Company to "divest itself of all the *assets, properties, rights and privileges* acquired by it from "the said other three companies, and to "cease and desist from the ownership, operation, management and control of the *assets, properties, rights and privileges* acquired by it from "said other companies."

4. The Circuit Court of Appeals for the Third Circuit affirmed said order. The Court also found that Thatcher Manufacturing Company had acquired the said assets by means of first acquiring the capital stock of said three companies (such acquisition of capital stock as such means or with such result is denied by Thatcher Manufacturing Company, although the acquisition of other assets is admitted).

5. Whatever may be the fact as to such acquisition of capital stock, the said Court entered its decree affirming the said order of the Commission and directing Thatcher Manufacturing Company to divest itself and cease from the ownership of said assets, properties, rights and privileges, acting therein presumably under said Section 11 of the Clayton Act.

QUESTION AT ISSUE

6. The said decision and decree therefore interpret the statutory powers of divesture of said Commission as extending

beyond the subject matter of capital stock and as extending to the further and wholly different subject matter of other assets.

GROUNDS FOR ISSUANCE OF WRIT

7. There is now outstanding a clear divergence and flat contradiction between the United States Circuit Courts of Appeal, for the Third and Seventh Circuits, on the one hand and the Ninth Circuit on the other, as to the above question of law. This divergence relates to the basic powers of an important governmental agency, as follows:

The Circuit Court of Appeals for the Ninth Circuit, in the case of Federal Trade Commission vs. Western Meat Company, involving the same question as to the powers of the Commission over assets, in its opinion rendered early in 1925 on rehearing, has taken a position exactly contrary to that of the Circuit Court of Appeals for the Third Circuit, (herein desired to be renewed), as to this particular power of said Commission over assets other than capital stock.

In said Western Meat Company case the Court held (quoting only the relevant language). "The order (of the Commission) required the petitioner (Western Meat Company) to cease and desist from violating the provisions * * * of Section 7 of the Clayton Act and to divest absolutely of all capital stock of the Nevada Packing Company, so as *to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof.*" (Italics by this present petitioner.)

The said Court then holds that the Clayton Act "gives the Federal Trade Commission no authority other than the authority to command the offending corporation to desist from holding stock in another corporation in violation of Section 7." * * * "We think the order in the present case goes beyond the authority conferred on the Federal Trade Commission in requiring the petitioner to divest itself of the Nevada Packing Company's plant and all

property necessary to the conduct and operation thereof." * * * The order was accordingly modified.

This Western Meat Company case is now before your Honorable Court on a petition for certiorari which has been granted by your Honorable Court. That petition was made by the Federal Trade Commission itself, seeking the final determination of exactly the same question as is now raised by the Thatcher Manufacturing Company, and above set forth as the basis of this present petition.

8. The Circuit Court of Appeals for the Seventh Circuit, furthermore, and on the other hand, in the case of Swift & Company vs. Federal Trade Commission, decided February 16, 1925, has taken a position on such question exactly the opposite of that taken in the Ninth Circuit as above set forth, and similar to that taken in the Third Circuit (herein desired to be renewed).

The said Swift & Company case is now again before the United States Circuit Court of Appeals for the Seventh Circuit on an application of Swift & Company for rehearing on the same question.

9. These three decisions, in three different Circuits, in the present case of Thatcher Manufacturing Company, in the Western Meat Company, and in Swift & Company cases, establish differing and conflicting rules of law as to the same important subject matter.

As is stated by the Federal Trade Commission in its petition for certiorari in the said Western Meat Company case (p. 9) —"This disagreement between the United States Circuit Courts of Appeals * * * in respect to said sections of the Clayton Act, necessarily entails doubt as to their correct interpretation * *. Manifestly the Commission can have but one rule for the enforcement of the law." The disagreement above referred to by the Commission is, of course, that already alluded to, namely,

between the Third and Seventh Circuits on the one hand, and the Ninth Circuit on the other hand.

The foregoing reasoning of the Commission upon this situation is convincing. It is also the more weighty, because the difficulties of the Commission itself under such diverse interpretation, as stated by the Commission, apply with equal force to those numerous corporations which are subject to this law in the three circuits, as well as the great body of citizens.

10. Furthermore (apart from the conflict of law thus created) the said decision and decree against the Thatcher Manufacturing Company in the Circuit Court of Appeals for the Third Circuit also involves (as do the other two cases referred to) the interpretation and extent of the basic powers of an important governmental agency, the Federal Trade Commission It thus affects the rights and duties of all citizens and residents, corporate and personal, in the United States.

11. Thatcher Manufacturing Company therefore respectfully prays that a writ of certiorari may issue from the Supreme Court to the Circuit Court of Appeals for the Third Circuit, for the bringing of the said case before the Supreme Court for its final determination.

12. The said decree of the Circuit Court of Appeals for the Third Circuit was issued after the last adjournment of the Supreme Court; and inasmuch as the Supreme Court will not again be in session until October , 1925, the said Circuit Court of Appeals has granted a stay upon said decree until October 15, 1925, in order fully to enable the Thatcher Manufacturing Company to prevent this petition of certiorari.

Charles Henry Butler
Attorney for Petitioner
1537 Eye St. N. W.
Washington, D. C.

BRIEF

This case presents a matter of general importance for two reasons;

Because of the flat conflict of interpretation of the Clayton Act between different Circuit Courts of Appeals;

Because the question at issue involves the fundamental powers of an important governmental agency, the Federal Trade Commission, under said Act.

Relevant portions of the Clayton Act are as follows:

Section 7. "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to tend to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Section 11 (Quoting only the relevant parts thereof). "If up such hearing the commission * * * shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections 7 and 8 of this Act, if any there be, in the manner and within the time fixed by said order."

The Federal Trade Commission has issued an order directing the Thatcher Manufacturing Company, Petitioner herein, to

divest itself of "assets, properties, rights and privileges" (other than capital stock) acquired by said Company from three competing companies. The Court below has issued its decree enforcing such order, (but granting a stay thereof until October 15, 1925, in order to allow of the filing of this petition for certiorari).

It is respectfully submitted that such order as to assets is beyond the statutory powers of the Federal Trade Commission, and, therefore not enforceable by judicial action, for the following reasons;

1. *Powers of a Commission Must be Expressly Granted.*

Any administrative commission or agency exercising as in this case, semi-judicial powers, must show a plain and express basis for such powers within the wording of its enabling statute. Such powers, so granted, have always been construed with considerable strictness. There is no such grant here.

Interstate Commerce Commission v. C. N. O. & T. P. Ry., 167 U. S., 479 (1897). This was an early and basic case as to the powers of the Interstate Commerce Commission. The I. C. C. Act had provided that "All charges, (railway rates) shall be reasonable and just,' and also that "The Commission is hereby authorized to execute and enforce the provisions of this Act."

The Commission, assuming to act thereunder, had made an order condemning certain rates as unreasonable and directing that future rates should conform to a given standard of reasonableness.

Held. Order invalid because beyond the power of the commission.

> "That Congress has transferred such a power to any administrative body is not to be presumed from any doubtful and uncertain language (p. 505)."

In view of the language of the I. C. C. Act above quoted, the attempted extension of the Interstate Commerce Commission's power was much more clearly justified by that language than is the extension of power attempted in the case at issue.

I. C. C. v. Alabama M. Ry., 168 U. S., 144 (1897). This case raised the same question in slightly different form with the same decision, to the effect that as Congress had not given the power expressly, it did not give it indirectly.

U. S. and I. C. C. v. Penn. R. R. 242 U. S., 208 (1916). The law at that time defined "transportation" as including cars and "all instrumentalities * * * of shipment or carriage" and stated that "it shall be the duty of every carrier * * * to provide and furnish such transportation upon reasonable request thereof * * * and the Commission is hereby authorized and required to execute and enforce the provisions of this Act."

Held that this could not be construed as requiring the carrier to furnish a specific form of car like tank cars.

Brewer v. Central of Georgia Ry., 84 Fed., 258 (1898).

> "The courts and commissions of the United States must look to what is expressed or necessarily implied by the law for their authority to decide issues (p. 261.)"

So. Pac. Ry. v. Colorado F. & I. Co., 101 Fed., 779 (1900). Order by Interstate Commerce Commission fixing a freight rate.

Held invalid as beyond the power of the commission.

> "But that power, it seems, has not been conferred and the courts cannot enlarge the authority of the commission by enforcing orders of that body which it has no power to make."

Amer. Sugar Ref. Co. v. D. L. & W. R. R. 207 Fed., 733 (1913). This was the case of an informal instruction as to rates issued by the I. C. C. but not complying with the procedure required by statute.

Held unenforceable.

> "Acts of the commission, in exercise of its administrative functions, must, in order to be effective, strictly conform to those provisions and requirements of the Act by which its authority is prescribed and defined."

The order in this case must necessarily be based only upon the powers contained within the statute on which the original case was initiated.

Wilder Mfg. Co. v. Corn Products Co., 236 U. S., 165 (1914).

> "Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes (p. 174)."

2. *There is No Express Grant of Such Power.*

There is nothing in the enabling act (Section 11 of the Clayton Act, above quoted) of the Federal Trade Commission to justify that body in making or enforcing any order relating to assets other than stock. That Section gives power only to require "such person to cease from such violations and divest itself of stock."

There can be but one meaning in such language.

"Divesting of Stock" is divesting of "Stock." It is not divesting of assets, lands, tangible property, etc.

"Violations" means violation of Section 7 of the Act. That section can be violated in but one way, namely, by (a) acquiring stock with (b) certain forbidden effects, restraint of trade, etc. Both factors combine to make the offense. Mere acquisition of assets alone, mere restraint of trade, etc. — none of these of themselves violate the Clayton Act. They may be an offense under the Sherman Law, but not under the Clayton Act.

Any order of the Commission that is not based on the divesting of stock, goes beyond the Clayton Act and is invalid.

No such power, however desirable or desired, can be read into the plain language of the enabling act of this administrative body. It is not there explicitly, and it cannot be inserted there by implication.

3. *The Legislative Purpose of the Clayton Act.*

The purpose of the Clayton Act was purely preventive. It was expressly and narrowly aimed at stock control which *might* result in restraint. It dealt primarily not with restraint — the effect — but with stock acquisition, the method. It was not meant to duplicate the Sherman Law, which deals with and remedies *results*. It went a step farther back, supplementing the Sherman Law, by dealing with the problem in its incipient stage; namely, the method — stock acquisition.

All this is obvious from its form and historical position, and from the Congressional discussion accompanying its passage.

Mr. Justice Brandeis in his dissenting opinion, Federal Trade Commission *v.* Gratz, 253 U. S., 421 which annulled an order of the commission, stated the theory of the Clayton Act.

> "The proceeding is not punitive. The complaint is not made with the view of subjecting the respondents to any form of punishment. It is not remedial. * * * The proceeding is strictly a preventive measure taken in the interest of the general public (p. 432). * * * Instead of attempting to inflict punishment for having done prohibited acts, instead of enjoining the continuance of prohibited combinations and *compelling disintegration of those formed in violation of law* (Italics ours) the Act undertook to preserve competition through supervisory action of the commission. The potency of accomplished facts had already been demonstrated. The task of the commission was to protect competitive business from further inroads by monopoly. * * * Its action was prophylactic. Its purpose in respect to restraints of trade was *prevention* of diseased business conditions, not cure."

It is respectfully submitted that the action of the Federal Trade Commission throughout this, as in other like cases, illustrates an essential misconception of that legislative purpose.

The Commission falls frequently into an unconscious confusion of the Clayton and Sherman Acts, as though they were substantially duplicates and interchangeably applicable.

The Commission, in its arguments in this case, as well as in its brief for certiorari in the Western Meat Co. case (pages 13 to 18 inclusive) has continually cited decisions under the Sherman Law. In said brief the Commission points out (pages 11 and 12) that the said order may require "such person to cease and desist from such violations" and also may require such person to "divest itself of the stock held" and argues therefrom that the "violations" are something other and different from the control of stock.

The Commission misconceives herein the "violation" in question. The violation in question, as shown by Section 7, consists of two factors; acquisition of stock, and the various forbidden effects which we may generally call restraint. Either of these factors alone is not a violation of Section 7. The "violation" referred to in Section 11 which the Commission is empowered to terminate must therefore be a violation in which, at the time of the order, there existed both the factors as to stock and as to restraint.

It considers that it has presented a case for its action under the Clayton Act, when it shows a status of *restraint* by the acquisition of *property*. It then aims its order at such property. This is pure "Sherman Law theory." It disregards the fact that the offense under the Clayton Act can exist only by the coexistence of *two* factors (a) stock acquisition plus (b) actual or possible resulting restraint. It disregards the fact that the Clayton Act purpose is solely to *prevent* the result by preventing or destroying the *means*, i. e. stock control, and that any order

under that Act must be aimed as Section 11 provides, at divesting of stock.

4. In argument in this case the Commission has laid weight upon the broad and indefinite equitable proposition "that a person can not profit by his own unlawful acts."

This sweeping statment, usually applied in matters of private right between man and man, has no application to the question raised here as to the statutory power of a governmental Commission. Here is not the question of whether a certain corporation shall profit. It is a question of the extent of the power which Congress has conferred. This action is not brought to secure or to retain any profit. It is brought by the Commission to enforce a statutory remedy. The profit or otherwise of the respondent in the case is not in issue.

5. *Previous Interpretation by the Commission.*

On September 8, 1919, Mr. Victor Murdock, member of the Commission, appeared before the Judiciary Committee of the House of Representatives. That Committee was considering an amendment of the Clayton Act intended to confer additional powers upon the Federal Trade Commission. In support of this, Mr. Murdock (p 21 Serial 5 of the hearings) testified as follows:

> "Now in Section 7, Clayton Act, Mr. Chairman, Congress provided against a corporation acquiring the stock in competitive companies. I think at the time Congress passed that Act it was a wise piece of legislation. But Section 7 of the Clayton Act certainly needs strengthening now, because Section 7 does not include the word 'property.' * * * The government can not win where there is an acquisition of property instead of acquisition of stock as the law stands today."

Congress declined so to amend Section 7. The Commission is now attempting to exercise the very power which Congress declined to give them.

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No. 213

In the Supreme Court of the United States

OCTOBER TERM, 1926

THATCHER MANUFACTURING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

BRIEF OF PETITIONER

HERBERT KNOX SMITH,
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THE CASE, LOCKWOOD & BRAINARD CO.
HARTFORD, CONN.

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No. 721

In the Supreme Court of the United States

OCTOBER TERM, 1926

THATCHER MANUFACTURING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

BRIEF OF PETITIONER

PRELIMINARY STATEMENT

This case has *two* issues. One is peculiar to it, and apparently does not arise in the two other cases assigned with it for argument.

That peculiar issue is whether the Petitioner ever did acquire any capital stocks in violation of law.

There is, indeed, also the other issue common to all three cases; namely whether the Federal Trade Commission has any power to order divestiture of assets other than capital stock.

But wholly distinct from this second and common issue, *Thatcher Company denies that it ever illegally acquired any capital stocks or assets.* It asserts that, whatever the decision on the power of the Commission, the transaction complained of, itself, was in no way within the Clayton Act, and no ground ever existed for this action.

The Petitioner asserts that in that transaction the charged acquisition of the stocks in question was a *purely private venture of three men*, and not of Thatcher Company. That all Thatcher Company ever did was, at the end of the whole affair, to take over the plant and business properties of the other companies, as it had a right to do, paying then the full price therefor. That this sale to it was caused wholly by the *individuals* then having complete control of the stocks of those companies. That it took no part in any stock acquisition of competing companies, and is therefore not amenable to the orders of the Commission under the Clayton Act, no matter how those powers may be construed.

THE POSITION OF THE PETITIONER IS CONCISELY AND ACCURATELY STATED IN THE DISSENTING OPINION OF JUDGE BUFFINGTON IN THE COURT BELOW, QUOTED IN FULL AS FOLLOWS:

> " *Buffington, J;* In view of this case involving a far reaching question of jurisdiction, I note my dissent. The original purpose Baldwin " (one of the three men above referred to) " had in view, and which he finally carried out, was the acquisition and absorption of the several corporations involved by the purchase of their entire properties. If, in so doing, he suppressed competition the remedy for such wrong was vested in the courts and not in the trade commission.
>
> " The necessity for the prompt exercise of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock

> acquisition plan; but in my judgment the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock, and jurisdiction over it, if amenable to the law, was vested in the Federal Courts and not in the Federal Trade Commission. Such being my view I feel it my duty to respectfully record my dissent."

The Petitioner does not believe, furthermore, that it has violated the Sherman Law. But if it has, it at least has the right to a trial under that law and not under the Clayton Act.

It is the purpose of Petitioner in the argument which follows, to show that Judge Buffington's views, above given, were correct and that this action by the Commission against the Petitioner is an unjustified attempt to extend the functions of the Commission into a field which pertains to the Federal Courts and the Attorney General.

CITATION OF OPINION OF COURT BELOW

The opinion delivered in the Court below (Circuit Court of Appeals for the Third Circuit) is found in Federal Trade Commission *v.* Thatcher Manufacturing Company, 5 Fed. Rep. (2nd Series), 615.

GROUNDS FOR JURISDICTION

1. **Judgment Below** — The original judgment to be reviewed was filed April 16, 1925, (R. 289 to 299). Petitioner's petition for rehearing was denied by judgment filed June 2, 1925 (R. 340). Motion of Respondent for reform of order was denied by judgment filed June 12, 1925 (R. 340).

2. **Specific Bases of Jurisdiction** — (a) That the Court below, contrary to the claim of the Petitioner

there made, held that the Federal Trade Commission had power under the Clayton Act to require the Petitioner to divest itself of assets other than capital stock, and to require other action as to such assets, and directed the enforcing of the order of said Commission to such purpose (R. 298; also Petitioner's Reply, R. 266-269.)

That there has, on the other hand, been a holding upon such power of the Commission directly to the contrary, namely in the case of Federal Trade Commission *v.* Western Meat Company, 4 Fed. R. (2nd Series), 223 by the Circuit Court of Appeals for the Ninth Circuit.

There has thus arisen a conflict of interpretation of the Clayton Act as between different Circuit Courts of Appeals.

(b) That the Court below, contrary to the claim of the Petitioner there made, held that the Petitioner acquired the capital stocks of the Essex Glass Company, Lockport Glass Company, and Travis Glass Company in violation of the Clayton Act (R. 297; Petitioner's Reply, 263-264.)

3. **Statutory Provision for Jurisdiction** — The Clayton Act, under which this case arises, (approved October 15, 1914) provides (Section 11) that " The judgment and decree of the Court " (Circuit Court of Appeals) " shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty-five of the Judicial Code."

On October 26, 1925, the Supreme Court of the United States granted a writ of certiorari in this case (R. 343).

4. **Cases Supporting Jurisdiction** — As the jurisdiction is based upon statute (Section 11 of the Clayton

Act, above quoted) and certiorari has been granted, citation of cases in support of the jurisdiction is believed to be unnecessary.

STATEMENT OF THE CASE

(1) **The Initial Transaction — Parties** — Petitioner, Thatcher Manufacturing Company, is and was at the commencing of this action, a New York corporation, manufacturing and selling milk bottles, with plants and business in various states. The three other companies, whose capital stock Petitioner is charged with acquiring, were the Essex Glass Company, the Lockport Glass Company and the Travis Glass Company, also all manufacturing and selling milk bottles (hereinafter called the " three companies ").

All of these four companies were, at the beginning of the transaction in question, on August 28, 1919, in competition with each other in interstate commerce.

(2) The transaction in question began on August 28, 1919. Three dominating individuals appear on this opening date — MR. EDWARD LIBBEY, President of The Owens Bottle Company, (R. 105; 199), the most powerful glass products company in the country, with assets then of over $20,000,000 — MR. WILLIAM FORD, a business associate and large stockholder in Owens Company (R. 146; 157; 215) — and MR. FRANCIS E. BALDWIN, the President of Thatcher Manufacturing Company, the Petitioner herein (R. 86.) THE PETITIONER CONTENDS THAT THE WHOLE TRANSACTION CONCERNING THE STOCKS, WAS THE INDIVIDUAL BUSINESS VENTURE OF THESE THREE MEN, AND NOT THE VENTURE OF PETITIONER.

These three gentlemen (not Thatcher Company) had acquired personally certain options from a Mr. Axton on the stocks in question of the " three companies " (R. 93). The total purchase price under these

options was $2,110,000 (R. 95). There was also included in this price and in the original purchase, a fourth company, the Woodbury Glass Company. The Woodbury Company, however, no longer appears in this case, as the Court below dismissed it from consideration because its competition was negligible. (R. 298-299).

(3) **Paying for the Stocks** — This purchase price, $2,110,000 — and here, as the Court below held, (R. 295) is really the determining set of facts as to acquisition — was raised as follows. These three gentlemen, for a purpose which will be stated below (pp. 18-19) first organized the Sterling Glass Company. Into the treasury of that company was placed $500,000, half by Mr. Libbey personally and the other half by Thatcher Company. Each took an exact one-half of the stock. (R. 95).

The remaining and by far the greater part (over three quarters) of the purchase price was raised on August 28, 1919 by Messrs. Libbey, Ford and Baldwin on their *individual personal notes*. Mr. Baldwin made to the Guaranty Trust Company of New York his personal promissory demand note for $650,000; Mr. Libbey and Mr. Ford each made a similar demand note for $480,000, making a total of $1,610,000 (R. 36). Each endorsed the notes of the others. Thatcher Company had no connection whatsoever with this loan or with these notes. (R. 198). Nor did Sterling Comany.

(4) This sum, with the $500,000 held by Sterling Company, making a total of $2,110,000 — the option price — was paid by the lender, the Guaranty Trust Company (R. 149), to the original holders of the stocks of the "three companies," (and of the Woodbury Glass Company). No transfer of the said stocks was made at this time on the "three companies'" books, but the

stock certificates were simply endorsed in blank, and delivered to the Guaranty Trust Company as collateral for the said three individual notes. (R. 96; 113).

(5) **The Basic Contract** — As a part of the original transaction on August 28, 1919, Messrs. Libbey, Ford and Baldwin, and the Sterling Glass Company, made a basic contract. (R. 36). Thatcher Company was *not* a party to this contract. This contract described the transaction and provided for certain contingencies. The situation on that opening date was somewhat unusual.

(6) Mr. Libbey had only one interest in this whole affair; he hoped to acquire for his company (The Owens Bottle Company), certain important rival patents owned by the Hartford-Fairmont Company, relating to the manufacture of glass. The " three companies " held exclusive licenses under these patents. (R. 100.) The said basic contract states —

> " Whereas Libbey has entered into this Agreement in contemplation of the purchase by him or for his account of the so-called " Hartford-Fairmont Patents " * * * now owned by Hartford-Fairmont Company or under the control thereof." (R. 36).

(7) When this contract was made, it was uncertain whether these Hartford patents could be secured. (As a matter of fact they never were secured). The three associates therefore had to provide for two future contingencies —

(a) The contingency where the Hartford rights should be secured. In this case, Sterling Company was to be greatly enlarged and become the parent or " permanent " company (R. 223) for the Hartford-Fairmont acquisition and the Essex, Travis, Lock-

port and Woodbury Companies, and also for Thatcher Company itself. (R. 105; 146). Extract from basic contract (R. 36) —

> "Whereas it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the *plants and assets* (italics ours) of all of the said companies, together with the Thatcher Manufacturing Company."

(Note that Thatcher Company was not to organize this permanent company. On the contrary, Thatcher Company was to be absorbed by it).

(b) The contingency, on the other hand, of failure to secure the Hartford rights. In this case, Messrs. Libbey and Ford expressly reserved the right to withdraw from the whole transaction and from all liabilities thereunder. (R. 36-37). For this second contingency and the consequent withdrawal of Libbey and Ford, it was necessary to provide, in advance, someone who would then assume all the liabilities that had to be incurred in the purchase of the four companies' stocks. The options on these stocks were expiring in a few days. (R. 223.) It was necessary at once to incur note liabilities, as above stated, of $1,610,000 in order to exercise these options. Upon Libbey and Ford's possible later withdrawal, someone else must be prepared beforehand to assume these obligations.

(8) **Contract in the Alternative** — Therefore, the whole transaction was made in the *alternative*. This "alternative" feature explains much which is otherwise obscure. If the Hartford-Fairmont patents were secured, Mr. Libbey was to remain in control, the others "were following his leadership." (R. 145.) In the contrary event, Mr. Libbey and Mr. Ford might withdraw; and Mr. Baldwin (not Thatcher Company)

agreed thereupon to assume the entire final responsibility of all parties, including Sterling Company, with the right to do as *he* (not Thatcher Company) pleased with the acquisitions made. The contract so provides —

> " In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto." (R. 37).

This of course includes Sterling, as it was one of the " other parties." *Baldwin was thus the ultimate guarantor, the ultimate party in interest.* And again in such contingency —

> " Baldwin may proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement." (R. 37).

(9) **The Actual Working-out of the Contract** — So much for the initial plan. It was the second of the two alternatives that actually happened. Shortly before December 1, 1919, it was apparent that the Hartfort patents could not be secured. Therefore, on December 11, 1919, Messrs. Libbey and Ford, acting under the contract, gave Mr. Baldwin (not Thatcher Company, R. 129) written notice of withdrawal. (R. 40; 41; 113.) This brought all the liabilities and rights upon Mr. Baldwin. Evidently he knew what was coming, because he proceeded at once personally to exercise those rights. Between December 5th and 8th, 1919, he caused the stocks of the " three companies " to be transferred on the companies' books from the original holders to *himself and a group of his own business associates,* (not Thatcher Company), (R. 211; 224) the certificates still remaining as collateral. (R. 150.) None

of these associates paid anything for the transfer (R. 116; 151; 154; 163; 208) and were evidently representing Mr. Baldwin. This was all done on his sole order. (R. 150; 154; 211; 224.) No one questioned his right to do this, or his individual control. As Mr. Baldwin feelingly remarked. "They dropped the whole load on my shoulders and I sweat." (R. 110.) Sterling Company, important under the first contingency, now becomes a fifth wheel, and has hereafter no functions or activity.

(10) **Baldwin Takes Full Personal Control** — He thereupon took charge of the operation of the "three companies," (R. 97; 116; 211); had their books brought to his office; caused new boards of directors and officers to be elected, all nominated by himself (R. 116; 142), and exclusively exercised full, personal control, for a period of over five months.

(11) **Baldwin's Individual Financing** — Then, anxiously mindful of the fact that he (not Thatcher Company) was now liable for the purchase note obligations of $1,610,000, he (not Thatcher Company) began a long, earnest campaign to finance his responsibility. (R. 215 to 217.) HE HAD NO GUARANTY OR INDEMNITY FROM THATCHER COMPANY IN THIS, OR ANY RECOURSE TO THATCHER COMPANY. He did not control Thatcher Company. (R. 126.) Mr. Baldwin testified (R. 122) —

> "*Question.* You had no assurance of any sort that the thing would take place that did take place — that the Thatcher Company could finance and take over the assets?"
>
> "*Answer.* No, sir."

Again; (R. 198.)

> "*Question.* At that time or when the August 28, 1919, contract was made, was there any con-

tract, understanding, or relation of any sort between you personally and the Thatcher Manufacturing Company by which the Thatcher Manufacturing Company was in any way bound or could be bound to take up that liability on those notes?"

"*Answer.* No, sir."

Again; (R. 218.)

Mr. Mandeville, Director and General Counsel of Thatcher Company and active in the original transaction, testified;

"*Question.* Mr. Baldwin testified this morning that there was no conference agreement or understanding of any sort which would have allowed him to command the Thatcher Company to take over this liability" (on the notes).

"Is that your understanding?"

"*Answer.* Yes, sir; I talked with some of the directors of the Thatcher Company about it."

(12) **Kept Thatcher Company Out** — In fact, far from relying on Thatcher Company, Mr. Baldwin, pending the success of his financing, expressly, honorably, and deliberately kept Thatcher Company out of the transaction entirely. Mr. Mandeville, testifying as to his own anxiety in this financing, stated (R. 145-146) —

"*Question.* Had you had any assurance or certainty that the Thatcher Company could finance it, would you have had any such anxiety?"

* * * * * * * * * * * *

"*Answer.*

"Mr. Baldwin and I discussed the question of offering these assets of these companies to the

> Thatcher Company, and Mr. Baldwin pointed out that the Thatcher Company's stockholders included many women and people who were dependent upon an income from the Company and that he had always kept the Thatcher Company safe and sound and a reliable investment and that *he could not and would not bring any proposition to the Thatcher Company until it was in a definite form and could be financed and could be presented so as to be advantageous to the Thatcher Company.*" (Italics ours.)

Again Mr. Mandeville testified as to the non-involvement of Thatcher Company (R. 218.)

> "*Answer.* Yes sir; I talked with some of the directors of the Thatcher Company about it."
>
> "*Question.* What was the nature of that discussion?"
>
> "*Answer.* The particular discussion that I have in mind was with Mr. S. G. H. Turner, who * * * represented in the (Thatcher) board the J. S. Fassett interest in the Thatcher Company. He said that *it had been discussed among the directors, and that it was impossible for the Thatcher Company to take over these companies* because it would swamp them if it did." (Italics ours.)

This shows the position, both of Mr. Baldwin, and also of the Directors of Thatcher Company — both concurring. They completely contradict the idea that this was a Thatcher Company venture. Both Baldwin and the Company were against it, till safe financing could be secured.

In April 1920, more than seven months after the original purchase, he secured such banking support. (R. 44.) Subsequent proceedings were simply in con-

summation of this arrangement. In the last weeks of June 1920, in pursuance of votes of the stockholders of the " three companies," (*none of them being Thatcher Company and all of them being Baldwin and his associates*) (R. 17; 64-65; 68-70; 72-75; 132), bills of sale and deeds were drawn conveying all the companies' *assets* to the Thatcher Company.

(13) **Transfer of Assets to Thatcher Company — Closing Transaction** — On July 3, 1920, the entire transaction was closed. The bills of sale and deeds were delivered to Thatcher Company; Thatcher Company then delivered to the bankers a mortgage covering all these assets and the stock of Woodbury Company, (together with all of the property of Thatcher Company itself), to secure a bond issue of $2,000,000. The bankers then supplied the $2,000,000; this paid off the outstanding purchase notes (R. 99); and the notes were surrendered. (R. 139; 154.) As a finish of the entire transaction, the certificates of the stocks of the " three companies," held by the Guaranty Trust Company as collateral for such notes, were also surrendered. They were now of no significance. They certainly were not used by Thatcher Company to secure these assets, BECAUSE ALL THE DEEDS AND BILLS OF SALE WERE MADE AT LEAST A WEEK BEFORE JULY 3, 1920, PURSUANT TO VOTES OF STOCKHOLDERS WHO WERE ALL EITHER BALDWIN OR HIS NOMINEES, AND NOT THATCHER COMPANY. There were on July 3, 1920 neither assets or power behind these certificates. They were, in fact, of so little importance that it is not clear from the evidence what became of them. No one of the actors in the original transaction gave any thought to them. Apparently Mr. Mandeville got them. (R. 99; 139; 154; 208; 226.)

(14) Between October 20, 1920 and January 13, 1921, all of said " three companies " were dissolved, and their stocks ceased to exist. (R. 221.)

(15) **Sterling Glass Company** — This Company was organized at the instance of Messrs. Libbey, Ford and Baldwin five days before the opening of the whole transaction (R. 103; 104.) Thatcher Company and Libbey each took an exact one-half (2500 shares) of its stock, and each paid in $250,000 for such stock. This $500,000 was then paid over by Sterling Company on August 28, 1919, as part (less than one-quarter) of the purchase price of the " three companies " stocks, (including also Woodbury Company). Ten months later, on June 4th or 5th, 1920 Thatcher Company bought out Libbey's holdings in Sterling Company for par value ($250,000) and interest, and took record title to his stock.

The opinion of the Court below (R. 292, end of page) mistakenly implies that this was done immediately upon Libbey and Ford's withdrawal. As a matter of fact it was done six months later, under much changed circumstances and only after Baldwin had provided safe financing, based on a purchase of plant assets by Thatcher Company, a very different situation. (R. 162).

Sterling Company was a party with Libbey, Ford and Baldwin to the basic contract of August 28, 1919. Thereafter it ceased to function; never did any business (R. 104), and on June 7, 1920 voted to transfer all its assets to Thatcher Company, and a bill of sale was made on that date. So far, however, as appears on the evidence, Sterling Company then had no assets, except such rights as might accrue to it by reason of its having contributed $500,000 to the purchase of the four companies, and possibly a small cash balance of a few thousand dollars, probably interest on deposits. It was dissolved September 9, 1920.

Its brief and inactive history is none too clear. It was apparently intended by Libbey, Ford and Baldwin

to be the vehicle of the large combination which Libbey had in mind if the Hartford patent rights were obtainable, namely, the four companies, the Hartford patents, and Thatcher Company.

But when the purchase of the Hartford patents fell through, and Libbey and Ford withdrew, and the whole affair fell upon Baldwin, Sterling became a fifth wheel to the coach, and wholly inoperative and negligible.

SPECIFICATION OF ERRORS INTENDED TO BE URGED

The Petitioner intends to urge

(a) **First Issue — Stock Acquisition** — That the Court below erred in holding that the Petitioner acquired any of the capital stocks of the Essex Glass Company, Lockport Glass Company and Travis Glass Company " in a manner inhibited by Section 7 of the Clayton Act " (R. 297.)

(b) **Second Issue — Power of Commission** — That the Court below erred in affirming the order of the Federal Trade Commission directing Petitioner to divest itself of the assets and properties (other than capital stock) of the Essex Glass Company, Lockport Glass Company and Travis Glass Company; and directing the Petitioner to take other action as to such assets and properties; and erred in directing the enforcement of such order. (R. 298.)

SUMMARY OF ARGUMENT

(1) There are only two issues involved. First — whether the Petitioner acquired stock in the " three companies " in violation of the Clayton Act. Second — whether the Federal Trade Commission has power to require the Petitioner to divest itself of assets other than capital stock.

(2) **On First Issue.** Petitioner denies that it ever acquired the stocks illegally. It possibly did, at the end, on July 3, 1920 acquire certain empty certificates which had neither assets, power, nor significance.

(3) Prior to July 3, 1920, it did not acquire these stocks. At the beginning, *all the stocks were acquired by three individuals, as their private, personal venture.* There is no evidence of transfer of the stocks from these individuals to Thatcher Company. If, as we claim, the title to these stocks went on August 28, 1919 to these three men, the charged acquisition against Petitioner fails.

The transaction had to be framed in the alternative to meet either of two possible contingencies. This accounts for much of the complexity of the transaction and probably for the unfounded suspicion of a subtle plot.

(4) It was essentially an individual affair. Those three men raised, on their own personal credit, 88% of the purchase price. At first, all three of them and later, the remaining one, were personally liable on the notes by which this price was raised; *none of them had any recourse to Thatcher Company for it;* two of them had no stock or other interest whatsoever in Thatcher Company and no reason to assume, gratis, heavy liabilities for it. Thatcher Company had no connection with these notes. When the first two men withdrew, the third associate, Mr. Baldwin, assumed all the liabilities, and exercised all the indicia of complete power over the "three companies." He then sought permanent financing, expressly keeping Thatcher Company wholly out of the deal. Finally when safe financing was assured he offered to Thatcher Company that if Thatcher Company would assume the financing and pay off his personal purchase liabilities, he would cause all the *assets* to be transferred to Thatcher Company. Thatcher

Company accepted; the assets were so transferred; Thatcher Company mortgaged all of them and its own, with the bankers secured by Baldwin, and with the proceeds paid off the notes and took the assets, all on July 3, 1920, and at the end some one received as an empty form the empty certificates of stock.

(5) There is nowhere above any acquisition of stock by Thatcher Company. The Court below came to a contrary decision, but only through what Petitioner respectfully regards as a fundamental error of law. That Court, admitting that three-fourths of the purchase price was raised by these individuals on their own credit, nevertheless, concluded *that this money so borrowed by individuals* DID NOT BELONG TO THEM *and, consequently, that the stocks purchased therewith were not theirs.* This erroneous conclusion settled the question of acquisition against the Petitioner. A contrary conclusion would have decided the case in favor of Petitioner.

(6) There are numerous minor points to be covered, arising, in the last analysis, because neither the Commission nor the Court below *has ever specified the exact time of the alleged acquisition or the facts constituting it.* The Petitioner has thus been left throughout, against its vigorous protests, in the unhappy necessity of proving a general negative in a quasi-criminal charge over ten months of complex transactions. It cannot be expected to give full consideration to all the remote and possible theories thus deducible.

(7) **On Second Issue.** The second issue is whether the Commission has power to order Petitioner to divest itself of assets and properties other than capital stock.

(8) The only *expressed* power given in the Clayton Act applicable hereto, is to order the divestiture of stock. Divestiture of plant assets must therefore be based on an *implied* power. Petitioner considers that

the statute is so specific as to leave no room for implied powers — that, as in the ordinary grant of power to an agent, the power delegated to an administrative body must be exercised within the *expressed* grant.

(9) The Commission, in ordering divestiture of assets, is attempting to remedy a *result*. The real purpose of Section 7 of the Clayton Act is to prevent an unfair *method* — the *holding* of stock which may result in restraint, etc. The real offense denounced in Section 7 is one of method *coupled* with a possible result, but not one of result alone.

Indeed, a main argument which will probably be urged against the Petitioner's position is that Petitioner's position practically nullifies Section 7 of the Act, because, (as is alleged in this case) it fails to cover the *result*, i. e., acquisition of assets. This is not so. It will always cover the *method*, the real offense. For example, whatever the construction of Section 7 — that Section will always be operative to prevent " the holding company " and the unfair method known as the " bogus independent " — a common device of great corporations, working through secret stock control. No power over plant assets is needed, under Sections 7 and 11, to prevent this. Section 7, therefore, is left intact as against such unfair methods, even on the Petitioner's theory as to power.

ARGUMENT IN FULL

PART I — ACQUISITION OF STOCK

(1) **Acquisition on July 3, 1920 Not Relevant.**—Let it first be admitted, solely for argument, that Thatcher Company did acquire these stocks on *July 3, 1920*. This late acquisition, however, was not against the Clayton Act, because prior thereto, or simultaneously therewith,

Thatcher Company had acquired all the *assets* by the direct vote and action of the *previous* holders (not Thatcher Company) of this stock passed one and two weeks earlier (R. 64-66; 68-71; 72-75); and therefore, such stock " acquisition " was

(a) Of an empty shell only;
(b) Had none of the specified effects as to restraint of trade, etc.;
(c) Did not and could not have resulted in securing assets, because they had already been secured; and
(d) Was, therefore, not in contravention of the Clayton Act.

(*Note.* The relevant portions of the Clayton Act are quoted on pages 42-43 below).

Therefore, any acquisition of the stocks on July 3, 1920 is irrelevant. Petitioner does not understand that the Commission bases its case on the acquisition of July 3, 1920. The Commission, in its Amended Complaint (R. 14) itself avers that the alleged acquisition took place " on or about the 28th day of August 1919 "; i.e. at the beginning of the affair. Further, the Commission itself has stated in its Finding, (R. 242), that " All competition between the Respondent (Thatcher Company) and the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company ceased not later than January 1, 1920." If this be so, subsequent acquisition of stock would not violate the Clayton Act.

(2) **Earlier Acquisition the Real Issue** – The real issue therefore, is whether Thatcher Company acquired the stocks *before* July 3, 1920, the closing date of the whole transaction.

(a) The Commission and the Court below hold that at some unspecified date, prior to July 3, 1920, and in some way and time not made clear either by the findings

of the Commission or the Court below, Thatcher Company did acquire the stocks of the said "three companies," and then used that acquisition to secure the assets on July 3, 1920.

(b) Thatcher Company denies this. It alleges that on July 3, 1920, it made a direct purchase of the *assets* and then and there paid the whole price therefor; that prior to that date, it had nothing to do with any control of the stocks, and that on the other hand, the acquisition of the stocks prior to that date was by certain *individuals purely as an individual and personal venture* over which Thatcher Company had no control; and that these individuals, or one of them, held these stocks until July 3, 1920, and then caused the assets to be sold to Thatcher Company, and Thatcher Company bought them, as it had good right to do.

(c) Everyone admits that ten months earlier, at the very beginning on August 28, 1919, *these stocks did change ownership and were then acquired from their original owners by somebody.* The Court below said "It is clear that, on delivery '(August 28, 1919)' the certificates were lodged with the Trust Company as collateral security for the loan to Baldwin, Libbey and Ford, and that the title on leaving the original owners passed to someone else. To whom?" (R. 295-6.)

The question is — who did this admitted acquiring? Was the transaction of August 28, 1919 (detailed above) a Thatcher Company venture, or was it the purely private venture of certain individuals? Thatcher Company alleges the latter. If it is correct in this claim, the case against it fails.

(3) **Basic Error of Court Below** — It is respectfully submitted that there was an underlying and fatal error in the prevailing opinion of the Court below on this issue of acquisition. This error arose from the

Court's interpretation of the transaction which took place on August 28, 1919 (see supra. pp. 10-11). It arose when the Court held that the acquisition of the stocks, (which was admittedly made on August 28, 1919), *was not made with the funds of these individuals,* Libbey, Ford and Baldwin. The Court, indeed, properly recognized that —

> " The balance or $1,610,000, Baldwin, Libbey and William Ford, * * * arranged to borrow from the Guaranty Trust Company of New York on their individual promissory notes, each note to be endorsed by the makers of the other two so that all were equally liable." (R. 291.)

The Court further, set up a test, in which we fully concur, namely, that the persons who furnished the purchase money must be the persons who real acquired the stocks. This is indeed a fair and common sense test. The Court, stating that the title had, on August 28, 1919, left the original owners, remarks —

> " When the title left them it went to somebody else. Who was it? This question may be answered by finding *whose money moved the title* from the original owners. Of this money, $500,000 was that of the Sterling Company. * * * *The balance of the purchase money was obtained from the Trust Company by Baldwin, Libbey and Ford on their personal notes."* (Italics ours.) (R. 295.)

So far, we respectfully concur in the facts stated by the Court, and in its reasoning. The inevitable next step, apparently, would be to hold that Libbey, Ford and Baldwin got the stock.

But here comes what we respectfully regard as a singular, and fatal, divergence from correct elementary

principle. The Court below proceeds at this point to the conclusion *that these three men, Libbey, Ford and Baldwin did not furnish the purchase money, although, as the Court itself stated, they "borrowed" it on their own credit, and were "liable" for it.* The Court remarks — (a remark which seems almost self-contradictory),

> "Baldwin had not contributed to the purchase any money of his own, although admittedly the purchase money was in part raised on the credit of his name." (R. 296). And again (R. 297) — "Baldwin did not own the stock because *he had never paid any money for it.*" Italics ours.)

This conclusion of course affects the *whole* of the purchase price, because the position of Libbey and Ford toward the purchase money was exactly the same as that of Baldwin, (save as to specific amount), and the Court must therefore have held the same as to all three men, namely, that they "had not contributed to the purchase any money of their own."

(4) **Does Borrowed Money Belong to the Borrower, or Not?** — This conclusion of the Court below appears to us to go against the most elementary principles of property rights. If a man borrows $1000 of a bank and gives his note, surely that money becomes his property. Whatever he purchases with that money, likewise becomes his.

The Petitioner believes that the pivotal error in the case is apparent in the foregoing excerpts. The Court, following uncontested facts, finds (a) that three-fourths of the purchase money was raised solely on the personal notes and credit of three individuals; (b) it further finds that the money so raised caused the transfer and acquisition of the stocks; (c) that these very stocks were deposited as collateral for these individual

notes; (R. 295), (d) but *then* it finds that this money so raised was *not* the money of these three men; that it did not belong to them! And, consequently, that they did not acquire the stocks bought with it.

This theory, using the Court's own test (p. 25), decided the crucial issue of acquisition of stock. If the Court erred, the case against Petitioner fails.

Of course, when such a conclusion is once accepted, any results may follow. The ownership of that money — and of the stocks purchased therewith — becomes broadly conjectural and may be assigned to anyone. Petitioner is wholly unable to check or follow any subordinate conclusions thereafter deduced.

(5) **Whole Transaction a Personal Venture of Three Individuals** — Furthermore, wholly apart from the matter of the purchase money, the transactions above set forth can have only one interpretation. They constitute obviously the personal venture, first of three men, Libbey, Ford and Baldwin, with Thatcher Company concerned only indirectly and to a total amount of only $250,000, (later, June 5, 1920, of $500,000), in the stock of the Sterling Company which, in turn, never acquired these stocks. Three months later, December 11, 1919, on Libbey and Ford's withdrawal, this venture, still individual, became the sole venture of Baldwin. He assumed all the obligations, earnestly worked to and finally did fund the obligations, meantime having honorably, and to his own risk, kept Thatcher Company entirely free from any entanglement. (R. 146; 198; 218, and evidence quoted above, pp. 14-16.) Then when the proposition had thus been drawn into a safe financial condition, all at the effort and risk of Mr. Baldwin, he offered the assets to Thatcher Company (R. 132) if they would take care of his personal liabilities. (R. 110; 132; 133; 146.) The offer was accepted. The " three companies " were caused, in June 1920, *not* by

Thatcher Company but by *Baldwin and his nominees, as the recorded votes show*, (and as the Commission states R. 17) to transfer their assets. (R. 63-65; 68-70; 72-75.) The assets thus acquired, were mortgaged to raise the necessary money; the note liabilities were liquidated and the transaction closed.

(6) **Thatcher Company Presumably Paid Purchase Price Only Once** — Thatcher Company thus on July 3, 1920, at the end of the transaction, paid the purchase price by assuming a bond mortgage of $2,000,000. (See Letter to Bankers R. 80) This has the weighty significance of cold cash. Up to that final date, Thatcher Company had assumed no obligation in connection with the affair, and had paid no money beyond the relatively small sum of $500,000 invested in Sterling Company. On July 3, 1920, on the other hand, it obligated itself for $2,000,000 and paid out $1,634,955 (R. 163.)

Now one thing is certain. *Thatcher Company certainly did not pay* TWICE *for these companies.* It certainly did pay the full price July 3, 1920 (R. 132.) The actual check is set forth in the record (R.163.) That then was the true date of any such title as Thatcher Company acquired, and all it got on that date was plant assets. The stocks on that date were without value or meaning. If Thatcher Company had really owned the stocks before July 3, 1920, it certainly would not have paid cash for the assets on that date. Any acquisition of stocks prior to that date was by some one else — as a matter of fact, was by the individuals above named. Prior to July 3, 1920, and consistently from the inception of the affair on August 28, 1919, to its end on July 3, 1920, individuals only were in control of these stocks, first, three individuals and then one. The " residuary legatee," Baldwin, was paid in his turn, on July 3, 1920, when Thatcher Company liquidated his debts. (R. 132.) Any attempt to locate the

title of these stocks elsewhere can be based only upon the fundamental error in principle of the Court below, in its finding that money borrowed by an individual is not his and that stock purchased therewith does not belong to him.

The prevailing opinion of the Court below holds that the Petitioner " paid no money * * * for the assets and plants of the ' three companies.' " (R. 297.) This is in line with the basic error above referred to. Thatcher Company certainly on July 3, 1920 encumbered all its property with a bond mortgage of $2,000,000 *and then paid over to the Trust Company the cash sum to liquidate the notes of the man who controlled the stocks in question.* The only consideration which Thatcher Company got was the transfer of plants and business. It is hard to imagine what Thatcher Company was doing in this transaction, if not paying money " for assets and plant." The Court below apparently formed the impression that this final transaction was a purchase of stock. It remarks (R. 296) " It is difficult to see how the use of the respondent's money in the purchase of the shares did not draw to it the ownership of the shares."

Now, if anything is clear in this record, these two facts are, namely

(a) That it was not " respondent's money," but the money of Libbey, Ford and Baldwin that bought the stocks at the start, and

(b) That the transaction of July 3, 1920 was, in form and substance both, a purchase of plant assets and not of stock.

(7) **Uncertainty Arising From Basic Error** — Following this basic error as to the ownership of borrowed money, a significant uncertainty runs through the record. The Court was in doubt as to who acquired these stocks on August 28, 1919. (R. 296.) It could

hardly have been otherwise. The Federal Trade Commission was also, obviously, in doubt. While these transactions covered nearly a year, nevertheless, the Commission merely found that the unlawful acquisition occurred *some time* during those ten months. The Commission in its Findings merely says: "The acquisition of the capital stock * * * (of the three companies) on August 28, 1919 *and the subsequent developments and transactions* (italics ours) constituted an acquisition by the Thatcher Manufacturing Company" etc. (R. 248.) In spite of the express requests and objections at once made by the Petitioner, (R. 251), the Commission declined to specify either the date of acquisition or the facts constituting it, leaving the Petitioner in the unhappy position (where it still remains) of having to prove a negative over this entire lengthy and complex transaction.

(8) **Intent** — The question of intent, though perhaps irrelevant, is referred to here because it seems likely that the Commission and, possibly, even the Court below, were unconsciously influenced by the suspicion that here was a deep and subtle intent to circumvent the law.

There never was any such subtle plot or intent. The very complexities of the transaction gave rise to such suspicion simply because neither the Commission nor the Court below grasped the real reason for these complexities. The real reason for them was not in any subtle purpose of these men. They were forced on them by the condition which they had to face. This condition was the alternative character of the original plan — a plan which had to meet either one of two very different contingencies. (Supra pp. 11-13.) The peculiar situation which faced these three gentlemen and which continued to develop through relentless circumstance, and not through their will, necessarily resulted

in a complexity of apparently unexplainable factors, such as the Sterling Glass Company and the like.

Wherever any intent does appear, by words or by conduct, it was plainly the intent either of Libbey, Ford and Baldwin or, with Libbey and Ford withdrawn, then the intent of Baldwin, to acquire and control these stocks. Thatcher Company did not want the stocks — had no use for them — kept clear of them — and only, at the end, wanted and decided to take over the assets.

(9) Baldwin had the right to offer these assets to the corporation and the corporation to buy them. This would perhaps be different if he had been acting as agent for Thatcher Company; if Thatcher Company had guaranteed him against loss, for example, or bore toward him the relation of principal to agent. One of the distinguishing marks of agency is that an agent is not personally liable for the business risks of the transaction. In the present case, nothing can be clearer from the evidence than the fact that Baldwin *was* personally liable; and Thatcher Company was not; that he had no recourse whatsoever to Thatcher Company; that Thatcher Company was in no way obligated to him in the deal and had no control over him; in short, was not his principal and he was not its agent.

(10) **Minor Issues** — The foregoing discussion contains the real essence of this first main issue. But a number of minor points must be covered briefly, due to this unhappy position in which the Petitioner finds itself, with the burden of meeting a quasi-criminal charge not specified as to time or factors.

(11) For example — the Court below remarks — "The Respondent (Petitioner here) admits that it holds the equitable title to the shares, for the reason that finally the shares were paid for with its money." Thatcher Company's officers did testify that it got, *finally*, the equitable title to the shares, but not that the

shares were paid for with its money in any significant sense. When these officers testified to the little knowledge they had about these certificates, they knew that Thatcher Company had bought all the assets; that it made no difference where the empty certificates were, and that if anybody had equitable title to them, Thatcher Company ought to.

(12) Again, in the so-called "Bond Agreement" of April 10, 1920, it was agreed by *Baldwin personally* that Thatcher Company should do various things. Thatcher Company was not a party thereto. It was the personal agreement between Mr. Baldwin and the bankers. (R. 44.) Nothing in it binds Thatcher Company.

(13) Similarly as to the report which Mr. Baldwin made to the Company in February of 1920. As usual with business men, he referred to facts from the business standpoint and not the legal point of view and made a number of actual, though perfectly innocent, misstatements. These, however, were statements of Baldwin only. They do not bind the Company.

(14) Again, the Court states that about January 1920, Thatcher Company itself took over the management of the four companies. (R. 292.) It is respectfully submitted that this is absolutely incorrect. The evidence, repeated frequently with no contradiction, shows that the management was taken over by Baldwin personally. Mr. Baldwin testified (R. 115) —

> "*Question.* Then the 1st of January 1920 the management and control of the Travis, Essex and Lockport companies was brought to Elmira, N. Y.?"
>
> "*Answer.* Yes, sir; under my control."

(See similar statements; R. 97 and 211.)

(15) Again, the Court places some weight upon loans between Thatcher Company and some of the "three companies." (R. 293.) Loans do not evidence ownership. While Thatcher Company did loan money to one company, another company loaned money to Thatcher Company. If this be ownership, which company is the owner?

(16) Again, the prevailing opinion states that if Baldwin owned the stock "then the shares still belong to him, for there is no evidence that he has sold them to the Respondent." (Petitioner here) (R. 297.)

Baldwin certainly did sell all the *assets* behind the shares to Thatcher Company. There is a mass of votes, deeds and bills of sale to prove this beyond all dispute. (R. 64, 66, 68, 70, 72, 75.) This done, who cared what became of the shares? He may still own them today, but they are waste paper.

(17) Again, there have been some vague suggestions that Thatcher Company somehow, presumably through Sterling Company, acquired somewhere, an *option* on these stocks. The only option Sterling ever had in these stocks was an unexercised right, under the basic contract. "Upon the payment of the said note (notes) all of the collateral thereto (the stocks) shall become the property of Sterling Company" (R. 37). Of course this means "payment" by Sterling. It certainly could not mean that if Libbey, Ford and Baldwin, or either of them, paid off the notes, the stocks would still go to Sterling. No court would have supported so absurd a claim. In any event, Sterling never did cause their payment (R. 122) and Baldwin did, by selling the assets to Thatcher Company. Furthermore, an option is not acquisition. It may never be exercised, as this one never was.

It was Baldwin, not Sterling Company, who was directly liable to the Guaranty Trust on all these notes,

as maker and endorser. Sterling was not on any of them. The Trust Company could have collected them from Baldwin. It had no such right against Sterling.

Sterling Company never was, and could not have been, the acquirer of the stocks. (a) It did not pay the dominant three-quarters of the price to the original stockholders. That payment was made by the Trust Company, who lent the money to Libbey, Ford and Baldwin, (R. 149). (b) Sterling was not liable, on the notes, for that money. (c) It did not pay off the notes, finally. (d) It never had more than $500,000 anyway. The Court below says (R. 292) " The Sterling Company had no money, for it had expended its whole capital of $500,000.

Thus, so far as Petitioner can see, that indirect interest of Thatcher Company, holding half of the stock of Sterling, in this unexercised " option " of Sterling Company, is absolutely the nearest approach to stock acquisition by Thatcher Company that appears anywhere in the record. If this be acquisition, then the word has been enlarged beyond recognition of established legal doctrine.

In fact, we are inclined to believe that the apparently " mysterious " presence of Sterling — simple enough when the alternative nature of the original plan is understood — has been the main factor in arousing suspicion. It is perhaps not too much to hazard the guess that if Sterling Company — which was organized only for a contingency which never was realized, and was discarded entirely when the deal for the Hartford patents failed — that if Sterling Company had never thus made its futile and meaningless appearance, there would have been no action against Petitioner.

(18) **Legal Definition of Acquisition** — " To make property one's own. To gain permanently."

1 Bouvier Law Dict. (3rd Rev.) 114.

" To get or gain by some lawful title; to make one's own according to some rule of law." *1 Cyc. Law & Procedure 630.*

White *v.* Waite 47 Vt. 502 (1874)

Question as to the date of a devisee's " *acquisition* " under a statute dealing with " property acquired " by a married woman.

Held. " While the right to a distributive share in her father's estate became vested * * * immediately upon the father's decease * * * yet the particular property did not become absolutely vested * * * until the decree of distribution," and the property was not " acquired " till then. (p. 507.)

See also 1 *Corpus Juris* 908; *Black Law Dict.* (2nd ed.) 20; *Walzen v. Board of Supervisors* 101 Calif. 15; *Allbright v. Sussex etc. Commission* 68 N. J. Law 523; *Le Flore County v. Allen*, 80 Miss. 298.

(19) **The Essential Issue of Acquisition of Stock.** All the foregoing minor considerations — discussed here simply out of abundant caution — can have little relation, however, to the one question of acquisition. Acquisition — title — must depend upon certain simple principles, which either operated or did not operate at a given time and because of certain primary facts.

The Petitioner claims that this entire complex transaction is explainable only by accepting one underlying fact, namely, that it was from the start and until July 3, 1920, the private, personal, individual venture of first, three men, and then one man. Mr. Baldwin. How, otherwise, can the following facts be explained?

(a) Over 88% ($1,860,000 out of $2,110,000) of the cash which bought these stocks was furnished solely by the personal credit of these three individuals. They

alone were financially responsible for this sum. (R. 198; 218.) Thatcher Company was not endorser or guarantor of the notes. (R. 94-95; 121; 204.) Is it likely that three men of such business standing would make themselves liable for this great sum solely to benefit a corporation in which two of them had no interest?

(b) None of these men had any guarantee from Thatcher Company against these large liabilities. *None of them had any possible recourse to Thatcher Company to relieve them thereof.* (R. 198.) Would business men have so involved themselves for the sole benefit of Thatcher Company without taking from the beneficiary at least some protection?

(c) Mr. Edward Libbey who was President of The Owens Bottle Company, and Mr. Ford, his business associate — neither of them had any stock holdings in Thatcher Company or the slightest interest therein. Why should they have mortgaged their credit for its benefit?

(d) If Thatcher Company had acquired these stocks at the start through the efforts of Libbey, Ford and Baldwin, it would at the same time have acquired the control of the eleven Hartford glass feeding machines held under license by the "three companies." These machines were dangerous business rivals of The Owens Bottle Company, (R. 90, 91). Indeed, it was because of that very rivalry that Mr. Libbey desired to secure for his own interests the control of the Hartford rights. Is it likely that Mr. Libbey, President of The Owens Bottle Company, would have been so ingenuous as to go into a transaction intended to supply Thatcher Company with a process rivalling that of his own company?

(e) *There is nowhere a single official act of Thatcher Company, or of its stockholders, or of its board of directors, relating to these stocks.* None of them took part in the important changes made during those ten

months as to the stocks, the officers and the business of the "three companies." Thatcher Company's name never appeared on the stock books of the three companies. (R. 157-158.) It never issued any proxy upon these stocks, or voted or attempted to vote them, or exercised or claimed any right in them whatsoever. (R. 127.) Mr. Baldwin went his way alone after Libbey and Ford dropped out, unsupervised, exercising complete powers. (R. 116; 132; 142; 175; 199; 211.) If this had been a Thatcher Company transaction, is it likely that that Company would have permitted Mr. Mr. Baldwin or that Mr. Baldwin would have dared, to commit Thatcher Company to a transaction involving over $2,000,000 (more than the total capital stock of Thatcher Company), without some official authority or ratification by Thatcher Company? When, at the close, Thatcher Company did buy the *assets*, the matter was laid before the stockholders (R. 59).

(f) Mr. Baldwin, wrestling with the financial burden thrown upon him, gives a humanly convincing piece of evidence on the real interests involved. *He knew*, whatever anyone else may now argue, that *he* was personally liable on these notes. He and his associates strained every nerve to rescue him. Meantime, Thatcher Company was entirely inert. If it were a venture of Thatcher Company, why did he not appeal to it for help? Why did he carry this burden alone?

On the contrary, *Mr. Baldwin deliberately and with the express concurrence of the directors of Thatcher Company, kept Thatcher Company entirely out of the whole transaction.* (See evidence quoted on pp. 14-16 supra.)

(g) If it was a Thatcher Company deal, why did Mr. Baldwin exercise full personal control after Libbey's withdrawal? Baldwin named the new transferees of the stock; Baldwin named the new directors and Bald-

win managed their businesses, and Thatcher Company took not the slightest notice of his doings.

(h) Finally, — Was there — could there have been — any form of legal or equitable procedure by which, at any time during the transaction and prior to July 3, 1920, Thatcher Company could have prevented Mr. Baldwin from selling these assets to anyone whom he chose! He and his associates had complete control of all the stocks. They were all of the stockholders, directors and officers of the companies. *They could have transferred these assets to the United States Steel Corporation or any one they chose.* (R. 199.) *Neither Thatcher Company nor anyone else could have prevented it.* AND IF IT HAD NO TITLE WHICH IT COULD ASSERT, IT HAD NO TITLE VIOLATIVE OF LAW.

This is certainly an extraordinary and unexplainable record if the affair was a venture of Thatcher Company. It is, furthermore, an extraordinary record for three business men, like Libbey, Ford and Baldwin, if we have to go on the theory that they did all that they did, solely and gratuitously for the benefit of Thatcher Company, and not as their personal venture. But viewed as the personal venture of the three men, every step is clear and self explanatory.

ARGUMENT IN FULL

PART II – POWER OF COMMISSION

(1) The second issue, that of the power of the Federal Trade Commission, has been raised by the action of the Commission (affirmed by the Court below) in directing Thatcher Company to divest itself of certain assets (not capital stock).

(2) **Stock Acquisition Assumed For Purpose of Discussion** – For the purpose of presenting this second issue, the Statement of Facts set forth above is inadequate, (pp. 9-19). Those facts, as Petitioner understands and has stated them, do not include one of the essential factors of this second issue. That is to say, – such power of the Commission over plant assets, if it exists at all under the Clayton Act, must be based on the premise that Thatcher Company secured these assets by means of acquiring the companies' stocks. (For convenience, the word " assets " is consistently used in this Brief in the sense of plant and business properties, as distinguished from capital stock).

Thatcher Company emphatically denies such acquisition of stock, as discussed in Part I above. But, for the purposes of discussing this second issue, we will nevertheless assume such facts as are necessary, namely;

(a) That Thatcher Company, did acquire the stocks of the " three companies " competing with Thatcher Company in interstate commerce, and then,

(b) Used such stock acquisition to secure the assets of the said " three companies;"

(c) With some of the resulting monopoly, restraint of trade or lessening of competition which is specified by Section 7 of the Clayton Act;

(d) That the "three companies" were all legally dissolved after such acquisition of assets and prior to the beginning of this action, and their stock thereupon ceased to exist.

(3) **The Order in Question** — Under such an assumption the issue is — Has the Commission power to require Thatcher Company to divest itself of assets, etc. (other than capital stock) or to require any other action regarding such assets?

The order of the Commission was as follows (R. 255).

"Federal Trade Commission *v.* Thatcher Manufacturing Company	Docket No. 738. Order to cease and desist and divest, etc. (modified)

"This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, the answer of the respondent thereto, a written stipulation of facts entered into by the respondent and approved by the commission, the testimony and evidence on file, and the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts with its conclusion that the Thatcher Manufacturing Company is and has been violating the provision of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially section 7 thereof.

It is therefore ordered that the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management, and control of the *assets, properties,*

rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and cease and desist from the ownership, operation, management, and control of said *assets, properties, rights and privileges* in such manner as to restore in harmony with the law the competitive conditions, with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such *assets, properties, rights and privileges* shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

2. Divest itself of all *assets, properties, rights, and privileges* acquired by it from the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and divest itself of *said assets, properties, rights, and privileges* in such manner as to restore in harmony with the law the competitive conditions with respect to said assets, properties, rights, and privileges so ac-

quired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such *assets, properties, rights, and privileges* shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

3. Divest itself of all the stock or share capital of the Woodbury Glass Company now held and owned directly or indirectly by the Thatcher Manufacturing Company, together with all right, title, interest, and claim in and to such stock or share capital, which said stock or share capital is hereby declared to have been acquired, and is now held by the Thatcher Manufacturing Company in violation of law or as a result thereof.

4. Submit within thirty (30) days from the date of this order, for approval by the Federal Trade Commission, a plan for the performance by the Thatcher Manufacturing Company of the terms of this order, jurisdiction for this purpose being hereby retained." (italics ours.)

(4) **Clayton Act — Relevant Sections** — The relevant portions of the Clayton Act are as follows —

> "SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

"Sec. 11. * * If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order."

(5) **Express Power** — As quoted above, the only *express* power conferred by the Clayton Act upon the Commission applicable to this case is the power to order divestiture of stock under Section 11 of the Act. No express power is given to order divestiture of plant or business assets.

The stocks of the said "three companies" having all ceased to exist before this action arose, (R. 221), an order merely to divest stocks would unquestionably have been meaningless in this case.

(6) **Implied Power Invoked By Court** — The Court below therefore, upholding the order to divest assets, based that decision apparently (and necessarily) on an *implied* power.

" The sole purpose of a valid order of the Commission must be to remedy an unlawful situation." (R. 297-298.) That is to say, if the situation is unlawful, there can be read into this particular Act any power necessary to remedy " the situation," regardless of the exact wording of the act.

It should be observed, in passing, that the Court below, in the belief of Petitioner, was in error — not only as to its expansion of the remedial power, but also as to the nature of the *offense* itself. The offense stated by Section 7 is the *acquisition of stock which may have certain results.* It is not the result alone. It is a *method combined with a possible result*, that violates Section 7. Mere restraint, monopoly or lessening of competition by themselves are not offenses under Section 7. The Petitioner believes that Section 7 was directed mainly at the so called " holding company," and not at merger of plant assets. We discuss this more fully below. (pp. 50-54.)

To revert, however, to the immediate issue, the extent of the remedy available;

We respectfully submit that the holding of the Court below as to the extent of the remedy is error. Congress in defining (in Section 7) the " unlawful situation," also (in Section 11) exactly defined and limited the remedy. One section is no more open to extension by interpretation than the other. Congress defined an offense; it then specified only one particular remedy — divestiture of stock.

If the language of Congress in Section 11 had been general instead of being specific; if, for example, Congress had given in Section 11 a general judicial power

to " remedy " (in the language of the Court below, R. 298), the unlawful situation, any effective remedy might be selected.

But Section 11 is specific and particular. Congress, following well-established precedents, did not desire to give to an administrative body a general power which is peculiarly judicial in character. Its language was therefore specific. Interpretation has no place against such particularity. " To divest stock " is to divest stock. It is not to divest assets.

(7) **Limits of Delegated Power** — A delegated power must be exercised within the limits expressed in the grant. A man gives to another an express power of attorney to raise $25,000 for him by selling certain stock. Suppose the agent then tries to raise the sum by contracting to sell the man's own residence. He has acted ultra vires and the principal can repudiate his act. The agent, (like the Commission in this case), may urge, indeed, that the power given was insufficient for the purpose — that the stocks were unsalable, etc. — and that he therefore had some other " implied power." That does not justify him. No more is the Commission justified. And, of course, the Court in an action like this, can only enforce the powers primarily conferred upon the Commission by the statute upon which this case was based.

Wilder Mfg. Co. *v.* Corn Products Co., 236 U. S., 165 (1914).

This case arose from an attempt to avoid a contract obligation on the ground that the other party was a combination in violation of the Sherman Law.

Held. Defense not valid. " Where a statute creates a new offense and denounces the penalty or gives a new right and declares the remedy, the punishment or the

remedy can be only that which the statute prescribes." (p. 174.)

(8) The Court below adduces a further ground for expanding by implication the statutory power, namely, " the familiar principle that a person cannot profit by his own unlawful act." (R. 298.)

Grant that a wrong has been done which cannot be remedied by the only power *here* conferred—the divesting of stock. The assumed " profiting " by the offender does not justify going outside of that statute and applying, in an action *based on the statute*, a power not contained therein. Once grant that a situation, irremediable under a specific power, can therefore be met by an indefinite extension of that power, then statutes — especially administrative statutes — become no longer law but vehicles of arbitrary power. Under this theory, the Federal Trade Commission when necessary could apply fine, imprisonment or eminent domain. As an administrative body, judicial in character, its powers must rest solely upon the statute.

(9) Citation of Authorities on Powers of Commission — The cases most directly analogous are those construing the powers of the Interstate Commerce Commission.

Beale & Wyman on Railroad Rate Regulation.

Chap. XXIV of this book, and the note under Section 1141 contain a good general review of the matter.

Interstate Commerce Comm. *v.* C. N. O. & T. P. Ry., 167 U. S., 479 (1897).

This was a basic case and thoroughly tried. The Act provided that " all charges shall be reasonable and just." Also that " the Commission is hereby author-

ized to execute and enforce the provisions of this Act."

The Commission had made an order condemning certain existing rates as unreasonable, and directing that future rates should conform to the given standard of reasonableness.

It was nevertheless

Held: Order invalid, as beyond the power of Commission.

" That Congress has transferred such a power to any administrative body is not to be presumed or implied from any doubtful and uncertain language." (p. 505.)

It is submitted that under the language of the I.C.C. Act above quoted the implication of the power so claimed was certainly far more justifiable than is the extension of power assumed in the case at issue.

I. C. C. *v.* Alabama M. Ry., 168 U. S., 144 (1897).

Raising the same question in a slightly different form, by means of an order fixing maximum and minimum rates.

Held: Invalid; as Congress had not given the power expressly, it did not give it indirectly. (p. 162.)

U. S. & I. C. C. *v.* Penn. R. R., 242 U. S., 208 (1916).

Order of I. C. C. to railroad to furnish tank cars to applicant.

The statutes defined " transportation " as including cars and " all instrumentalities * * * of shipment or carriage," and stated that " it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor * * * and the Commission is

hereby authorized and required to execute and enforce the provisions of this Act."

Held: That these statutes could not be construed as requiring the carrier to furnish a specific form of car like tank cars.

C. N. O. & Tex. Pac. Ry. *v.* I. C. C., 162 U. S., 184 (1896).

In passing upon the question of whether a given freight rate was reasonable the I. C. C. fixed a maximum rate.

Held: Not within the power of the Commission.

> "It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so." (p. 196.)

So. Pac. Ry. *v.* Colorado F. & I. Co., 101 Fed., 779 (CCA 1900).

Order by I. C. C. fixing a freight rate.

Held: Invalid; no power. Decision follows I. C. C. *v.* C. N. O. & T. P. Ry. 167 U. S., 479 (above).

> "It may well be that the Interstate Commerce act would be much more effectual * * if the commission * * was empowered to prescribe a schedule of maximum rates in cases like the one in hand. But that power, it seems, has not been conferred, *and the courts cannot enlarge the authority of the commission by enforcing orders of that body which it has no power to make.*" (Italics ours.) (p. 786-7.)

(10) **Attempt to Remove Case from Clayton Act.**— It is argued that the jurisdiction of the Circuit Court of Appeals in this case is original and equitable. Little

objection need be raised to this proposition. But the aim of such argument, apparently, is to lift this whole case out of the Clayton Act (Section 7 and especially Section 11) and to urge the application to it of some other principles, not specified, but certainly going beyond the Clayton Act.

Whatever may be the nature of this proceeding, it is certainly a case under the Clayton Act, and no other, and must be disposed of under the powers conferred by that Act and no other.

This is either a proceeding under a specific statute, or a proceeding with no basis or validity whatsoever. If it be under such statute, that statute, with all its powers and limitations of power, applies throughout. The Petitioner has thus far had " its day in court " only under that Act and with reference only to its charges and penalties. It has not tried its case nor presented its evidence with reference to any other statute or accusation.

(11) **Earlier Position of Commission Adverse to Present Claim** — The Federal Trade Commission itself, has heretofore denied that it had the power now claimed. In their " Conference Rulings " (Bulletin No. 1 of January 21 1916), the Commission held that its only jurisdiction in respect to Section 7 is to prohibit the acquisition of capital stock with the results denounced in the Clayton Act. It held that the mere purchase of the property of such a competing corporation other than capital stock, is not prohibited by the Clayton Act.

Commissioner Victor Murdock appeared on behalf of an amendment before the Judiciary Committee of the House (66th Congress) on September 8-9, 1919, intended to give the Commission the power which it now claims to have. On page 21 of Serial 5 of the hearings, he testified as follows: —

> "Now in Section 7, Clayton Act, Mr. Chairman, Congress provided against a corporation acquiring the stock in competing companies. I think at the time Congress passed that Act, it was a wise piece of legislation. But Section 7 of the Clayton Act certainly needs strengthening now, because Section 7 does not include the word 'property.' * * * The Government cannot win where this is an acquisition of property instead of acquisition of stock as the law stands today."

Congress refused so to amend.

(12) **Section 7 of the Clayton Act Not Nullified By Position of Petitioner** — It will be urged that the contention of the Petitioner in this case *practically nullifies Section 7 of the Clayton Act*. The argument has weight if once the premises on which it is based are admitted, namely, that it does so nullify Section 7.

That argument is as follows. If the Petitioner is sustained as to the limited powers of the Commission, and the Commission has no authority over assets other than capital stock, then any company can acquire the stocks of competitors; at once cause a transfer of their assets to the parent company; dissolve the subsidiaries, and thus accomplish a very practical result, leaving the Commission helpless to take any action under Section 7, and thereby rendering Section 7 meaningless.

This argument however is based on the premise that the only purpose of Section 7 is to prevent the foregoing *result*, namely, the acquisition of assets. But Petitioner takes exception to this premise.

(13) **Underlying Purpose to Prevent Unfair Methods** — The underlying purpose of the entire Clayton Act as shown both in the Act itself and in the voluminous debate thereon was to *prevent* unfair *methods*

of competition. An analysis of the whole Act shows that;

Section 2 of the Act prohibits unjustified discrimination between purchasers of commodities.

Section 3 prohibits the unfair use of control of patents.

Section 8 prohibits certain forms of interlocking directorates.

Section 10 is aimed at the same general principle of improper inter-relations.

The rest of the Act is administrative and supplementary for these general purposes.

In the midst of these sections comes Section 7, which specifically prohibits, not the acquisition of assets — that is to say, a result, a completed process — but the acquisition of stock under certain conditions as a *method* which " may " produce certain results.

That is to say, all the substantive parts of the Act are directed at methods of accomplishing certain things.

(14) **Congressional Debate** — All this is borne out by the congressional discussion upon the Act. It was stated again and again, that this Act was not intended to duplicate the Sherman Law, but to supplement that law and to provide against methods tending toward undesirable results, rather than to remedy accomplished results, which is left to the much broader Sherman Law and the Federal Courts.

Senator Cummins, Chairman of the Committee in charge of the bill, said (Cong. Record 63rd Congress, 2nd Session, Vol. 51, Part 14, p. 14,474 — " This legislation is supplemental to the Anti Trust Law."

The discussion in the Senate covered several hundred pages, appearing largely between pp. 13,963 and 14,780. Wherever Section 7 (then called Section 8) was dis-

cussed, it was almost wholly with relation to its bearing on " holding companies " — its effect on the *holding* of stock in a competitor.

Senator Poindexter said, (Id. p. 14,317) — " Here it is proposed to specify a certain definite transaction and prohibit it, namely the corporate ownership of stock in a competing corporation, or the holding of stock in two competing corporations by a holding company."

(15) **" Bogus Independents "** — That discussion shows not only that Congress intended to remedy certain general evils of the " holding company " — an intent which is not nullified by Petitioner's position — but also at least one specific evil. It had become a common practice among great corporations to make use of so-called " bogus independent " companies. A great corporation would secretly acquire stock control of a smaller concern competing with the " trust " locally. It would then use this concern to cut local prices so as to destroy all real local competitors. This gave a very important advantage. The great corporation did not wish to cut its own open price list locally because that might affect its prices all over the country. But it could safely do so through the bogus independent. A part of the Congressional debate deals with this specific matter.

Senator Thomas (Id. p. 14,468) —

> " The holding company is a concern which enables people to do business with concealed weapons."

Senator Reed (Id. 14,457) was citing the case of a well known railroad, with many subsidiaries, and stated that if this road had bought these subsidiary lines openly it would have come before the public and the

Attorney General. But that "when they (the railroad), acquired secret ownership of the majority of the stock of these roads, which were held up before the public as independent companies, and the public led to believe that they had competition, they defrauded the whole public."

All this shows what Congress had in mind. It throws a good deal of light on Section 7. Assume that the contention of the Petitioner is correct. Assume that under the Clayton Act the Commission has power only over capital stock. Nevertheless, it would still always be true that Section 7 would prevent the general evil discussed, namely control by stockholding, as well as this unfair method of bogus independents. That is to say, under Section 7, and under Section 11 so limited, any corporation is prevented from *holding the stocks* of competitors. Section 7 is perfectly valid against such practice. If the Commission takes action under Sections 7 and 11, the parent corporation must either divest itself of the stocks acquired and the resulting secret control, or (as is alleged to have been done in this present case), actually take over the assets of the subsidiaries. Then it would come out in the open, with a revealed and recorded ownership of the subsidiary. The secrecy — the sole value of the bogus independent, — and the "holding" feature generally — are destroyed, the full responsibility of the parent corporation for the control and price policy of the subsidiary is revealed, and the unfair method eliminated.

(16) The position urged by the Petitioner in this case as to the limited power of the Commission, therefore, does not render Section 7 meaningless. It does not affect what the Petitioner urges to have been the main and logical purpose of that Section. It preserves in Section 7 that same general purpose which runs throughout the Act, namely, the prevention of a general,

as well as a specific unfair method of competition which would tend to lessen competition or restrain commerce.

This would appear to dispose of a weighty argument which can be offered by the Government in favor of the extended power of the Commission, namely, the argument that a decision in favor of the Petitioner would render Section 7 meaningless.

In fact, Petitioner respectfully submits that Sections 7 and 11 of the Clayton Act are not aimed at all at combination of plant assets, but only at stock control, when and so long as such control of itself is producing restraint of trade, etc. Combination of plant assets is, distinctly, not prohibited by the Act. Petitioner submits that merger or combination of assets as such, is not an offense under the Clayton Act, however arrived at. The very form of Section 7, which refers primarily to acquisition of stock which " may " have certain results, indicates this. It does not prohibit such results, but only stock acquisition. Section 11, which only specifies power to divest " stocks " is peculiarly apt in form if the true purpose of Section 7 be only to prevent the evils of the holding company, as Petitioner believes it is.

CONCLUSION

To sum up:

(1) The Petitioner did not illegally acquire the stocks in question, because the whole affair from the start was the private venture of three individuals, who acquired the stocks with their own money, and who later sold the assets to Petitioner, in exchange for full value, namely the assumption of the purchase liabilities. The whole series of ten months' actions by these individuals — and ten months' inaction by Thatcher Company, — is exactly consistent with this theory, and wholly inconsistent with any other.

(2) The Federal Trade Commission has no express power over plant assets under Section 11 of the Clayton Act. It is improper to read into this power delegated to an administrative body any enlargement of power based on necessity and implication.

(3) It is further improper so to extend such power, because there is no such necessity. The true purpose of Section 7 deals primarily with a *method*, and that purpose remains operative without any such extension. The Section is preserved in full force and meaning, without such forced extension.

(4) All that Petitioner ever did in this entire matter was to acquire for full value on July 3, 1920 plant and business assets. This it had the right to do.

The Petitioner therefore respectfully prays that the said judgment of the Court below be reversed.

THATCHER MANUFACTURING COMPANY,
Petitioner

By HERBERT KNOX SMITH,
Its Attorney

Office Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1926

THATCHER MANUFACTURING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION, *Respondent*

REPLY BRIEF OF PETITIONER

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THE CASE, LOCKWOOD & BRAINARD CO.
HARTFORD, CONN.

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No. 721

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v.

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REPLY BRIEF OF PETITIONER

PART 1.

ACQUISITION OF STOCK

For the first time in this case the Respondent has, in its brief in this Court, made a definite statement of its theory of the alleged unlawful acquisition of stock by Petitioner. The Petitioner is thus at last enabled to make a specific reply to a specific charge.

1. The Commission's Theory of Stock Acquisition.

The Respondent's theory of the alleged unlawful acquisition by Petitioner of the stocks of the Essex, Lockport, Travis and Woodbury Glass Companies is summarized on page 25 of its brief as follows:

> "The Thatcher Company acquired through its ownership of the stock of the Sterling Glass Company, the stocks of the Essex, Travis, Lock-

port and Woodbury Companies which were purchased and owned by the Sterling Company."

To state it more concretely, the Respondent asserts

(a) That the Sterling Company paid for the stocks in question at the start, and mainly with *money loaned to it* by Libbey, Ford and Baldwin, the three individuals prominent in the affair. This the Petitioner denies.

(b) That at some date during the transaction the Thatcher Manufacturing Company acquired control. The Respondent sets this date as December 11, 1919 or a little earlier. The Petitioner admits that it acquired such control on June 4, 1920.

(c) The conclusion of the Respondent then, (granting the premises) naturally follows, that as soon as Thatcher Company had a controlling interest in Sterling, it acquired, in the sense of the Clayton Act, the stocks in question, which, Respondent alleges, had been purchased and owned by Sterling.

Thus in broad outline Respondent's theory is a chain consisting of two links; first, the purchase and equitable ownership of the stocks by Sterling. Second, the control of Sterling by Thatcher Company.

This is the " chain of title " in the alleged offense. Upon this chain Respondent's case for unlawful acquisition has come to depend. This is the only line of connection between Thatcher Company and these stocks. If it fails at any point, the case for acquisition, and consequently the whole case against Petitioner, fails with it.

The facts of the transaction, save in one vital point, and certain other less important points, are not in dispute. With the exceptions just referred to, Respondent's brief has stated the facts correctly, and, without exception, fairly.

2. Did Libbey, Ford and Baldwin Loan or Give $1,610,000 to Sterling?

The vital fact in dispute is the claim of the Respondent that the bulk of the money which purchased the stocks — $1,610,000 — borrowed by Libbey, Ford and Baldwin on their personal notes, was then at once transferred by them to, or deposited in bank, to the credit of Sterling Glass Co., either as a loan or as a gift. This Petitioner flatly denies.

This question of fact is of first importance. The dominant issue on this branch of the case is the question of who paid for these stocks — whose was the money? The Court below made this the decisive test, which we discuss as such. Did Sterling Company, or did the three men own this money?

The Respondent admits that three quarters ($1,610,000) of the purchase price of the stocks was actually raised by three individuals, Libbey, Ford and Baldwin, on their own individual personal notes. It admits that this sum was borrowed by these three men at the Guaranty Trust Co., and was used to buy the stocks. The Sterling Company was not on these notes.

But at this point a really singular assertion is set up.

3. The Alleged Gift or Loan to Sterling.

Respondent at this point alleges that these three men, having raised this money on their own credit and made themselves liable for $1,610,000, thereupon loaned or gratuitously handed over this money to Sterling Company, which neither of them controlled, and without receiving from that company any note, receipt, memorandum, collateral or other evidence of debt or of security. This may have been as well a gift as a loan. There is no evidence either way on this particular point.

This assertion seems to Petitioner almost incredible.

4. The Evidence Relied Upon By Commission.

This claim is not based on any primary record; or on any statement of bank account — the obvious and best proof — or on any written evidence whatsoever. It rests on none of the usual and required proofs. It rests only on three doubtful and casual remarks of witnesses, made in wholly different connections, as follows:

Respondent's brief says (p. 27) "The proceeds of the notes of Baldwin, Libbey and Ford were deposited in the Guaranty Trust Company *to the credit of the Sterling Company.*" (Italics ours). In support it cites pp. 38-39; and 149 of the record.

Nothing on page 149 justifies this statement. The nearest approach is in the following testimony by Mr. Mandeville:

> "*Answer.* They (the proceeds of the notes) were deposited with Guaranty Trust Company and the Guaranty Trust Company through its representative, disbursed that money to the individual stockholders of the four companies."
>
> "*Question.* Was any other sum or amount placed with the proceeds of the notes?"
>
> "*Answer.* Yes, Sir."
>
> "*Question.* What was that?"
>
> "*Answer.* $500,000 that had been realized from the sale of capital stock of the Sterling Glass Co."

There is nothing else on p. 149 that can possibly be referred to in this connection.

The above testimony is no proof of a transfer of $1,610,000 from these three men to Sterling. We assume that Respondent interprets the words "placed with" as implying that both the $500,000 and the $1,610,000 were deposited to the credit of Sterling.

This is indeed a long leap. There is nothing here about any deposit to the credit of Sterling. It can just as well be argued that Sterling's $500,000 was deposited to the credit of Libbey, Ford and Baldwin. In any event "placed with" does not necessarily mean "deposited to the credit of." The phrase "Placed with" was that of counsel for the Commission. The witness in replying probably had simply in mind the fact that the two sums were used together. Title to a million and a half dollars can hardly rest on such evidence. It will further be observed that the Trust Company (not Sterling) "disbursed that money to the stockholders."

5. The second piece of evidence cited is pp. 38-39 of the record. This is part of a letter by Mr. Mandeville to Mr. Baldwin written about five days after the transaction. The portion which must be the part relied on is as follows:

> "You should receive from the Guaranty Trust Company a letter giving you the dates and amounts of all the checks *drawn by it* against the deposit to the credit of the above company. My figures show that I deposited $500,000, and the proceeds of the notes amounted to $1,610,000. * * * This made a total deposit of $2,110,000."

6. It is hard to tell just what line of deduction has been applied here. Possibly Respondent means to claim that the words "the above company" refer to Sterling, (which was mentioned earlier in the letter) and that the next sentence implies that both the amounts which Mr. Mandeville names were deposited by him to the credit of Sterling.

This is another long leap in the dark. The natural grammatical reference for "the above company" is to Guaranty Trust Company, the company most re-

cently mentioned. The Trust Company was the place where all of the funds were deposited, and the company which actually disbursed them (R 149). It will also be observed that Mr. Mandeville speaks of "all the *checks drawn*" by the Guaranty Trust Company. It certainly could not draw checks on a deposit in the name of Sterling. No checks of this amount drawn by Sterling appear anywhere. This evidence seems against, rather than for, Respondent's claim. Like the first piece of evidence, it shows that what really happened was that all of the money was deposited to the credit of the Trust Company, which then "disbursed" it.

Even assuming that "the above company" refers to Sterling, the next sentence does not state that this $1,610,000 was deposited to Sterling. Nowhere on p. 39 is there any specific sum stated as deposited to the credit of Sterling Company.

7. There is a third piece of evidence cited, p. 94 of the record, testimony of Mr. Baldwin.

> "*Answer.* The stock was transferred in blank to the Guaranty Trust Company and held by them as collateral security on the notes which we had discounted there on behalf of the Sterling Glass Co."

It is evidently the phrase "discounted on behalf of the Sterling Glass Co." to which Respondent refers. This might mean anything. Baldwin was doubtless thinking of his attitude of mind at the start of the transaction, when, like the other men, he fully expected Sterling to be the parent Company, and to take over everything, Thatcher Company, the four companies, and the Hartford patents, and when everything that they did was presumably being done "on behalf of Sterling." Such a phrase is too indefinite to prove

transfer of the title to $1,610,000 especially in the glaring absence of the one valid and best proof (if it existed), namely the books of the Trust Company.

There is also, on p. 11 of that brief, the statement that the proceeds of the notes and the $500,000 were "used by Sterling Company" to buy the stocks. Pages 95, 96, 113, 134 and 135 of the record are cited, but are probably not cited as supporting the phrase above quoted. Certainly there is nothing on any of these pages as to any use of this money "by Sterling Company."

This, then, is the evidence, and all of the evidence cited or relied upon by Respondent to establish this allegation, absolutely essential to its case, namely, the loan or gift of $1,610,000 from the three men to Sterling. For if Sterling did not get this $1,610,000, it could not have paid for the stocks and therefore did not own them. And, such as it is, this is all the evidence there is anywhere in the record which can be used to support this claim.

These three fragments of testimony, two of which support the Petitioner, rather than the Respondent, have been picked out of a record of over 200 pages of evidence, and practically all the rest of the record negatives the Respondent's claim.

8. All Proper Evidence Lacking.

There is no evidence from the Trust Company itself of such loan or gift; no certified copy of accounts; no written evidence of a loan or gift to Sterling; no plain or direct statement by anyone. This alleged fact, now so vital to Respondent's case, could (if it ever existed, which it did not) have been proved at the trial in the simplest and most convincing manner by introducing a transcript of Sterling's account in the Trust Company. This was not done. This incidentally indicates

that this present theory of the Commission is an afterthought. If it was a part of its original case, it surely was singularly neglectful in proof. However this may be, the whole case against Thatcher Company now hangs on these three fragments of secondary evidence, given when the present issue was not before the witnesses and from which only a forced construction can extract any support, and two of which support the Petitioner. And all this is in the considerable transaction of the alleged gift or loan by three individuals of over a million and a half dollars of their own money to a corporation.

This evidence, even taken by itself, does not seem to Petitioner to support the weight that is attempted to be suspended upon it, namely, the burden of the whole case, and the dissolution of the petitioning corporation.

9. The Evidence to the Contrary.

The evidence taken as a whole makes it clear that when it was taken no one had any idea that Sterling owned the $1,610,000 raised by the three men — neither the witnesses, nor, particularly, the Counsel for the Commission. They all assumed that Libbey, Ford and Baldwin owned this sum when it was used to purchase the stocks; that they agreed to " purchase the stock " (R. 93).

> " We (Libbey, Ford and Baldwin) paid for the stock in the different companies named." (R. 95-See also R. 96)
>
> " *Question* by Mr. Brindley, Counsel for the Commission: " In August 1919, what stock did you and Mr. Ford and Mr. Libbey and the Sterling Glass Co. purchase?"
>
> " *Answer* (by Mr. Baldwin). We bought the stocks of the Woodbury Glass Co., Travis Glass

Co., The Lockport Glass Co., and the Essex Glass Co." (R 97)

"*Question* by Mr. Brindley, 'So Mr. Libbey and Mr. Ford and yourself were the acquirers of these properties, weren't you?' "

"*Answer* Yes, Sir." (R. 110).

"*Question*, by Mr. Sheppard, Presiding Examiner: "Well as a matter of fact, the title to the Travis, Essex and Lockport companies was never in Sterling Glass Co., was it?"

"*Answer* (by Mr. Baldwin) No, Sir." (R. 112).

"*Question* (by Mr. Smith, Counsel for Thatcher Co.,) 'Who, actually, under that contract, did purchase the stocks of these companies?' "

"*Answer* (by Mr. Baldwin, after an interruption) 'Mr. Libbey, Mr. Ford and myself and the Sterling Company — the Sterling Company put in $500,000. The other three put in $1,610,000.' " (R. 127)

"*Question* (by Mr. Sheppard). And you were the sole owner, then, of the stock of the entire three companies?"

"*Answer* (Mr. Baldwin) I was; Yes, Sir." (R. 110).

Mr. Brindley, Counsel for the Commission, in seven or eight places in the evidence, enquired into this purchase. The substantive part of the evidence is contained in his questions. The witness usually only has to say "Yes" or "No." (See R. 94, 96, 113, 134-135, 149, 203-204, 223.)

His form of question is well illustrated on pp. 203-204, of the record. He asks about each note separately, and then

"*Question*, Then the money secured on these three notes, together with $500,000 secured from the sale of capital stock of the Sterling Glass Co., was used to purchase the capital stock of the Travis, Essex, Lockport and Woodbury Glass Companies, was it?"

"*Answer*, Yes, Sir."

10. Surrounding Circumstances Negative the Claim.

All the surrounding circumstances of the case negative this improbable loan or gift.

(a) These three men had raised this large sum on their own notes and credit. It was theirs and theirs only when they borrowed it. Each was liable for all of it. They would part with it only for full value under complete formal protection.

(b) There is not a scrap of written evidence of any such loan or gift. This in itself is fairly convincing. Business men do not thus casually throw a million and a half dollars from hand to hand, like a tip to a porter, without some written evidence or record of the transaction.

(c) The alleged deposit "to the credit of Sterling" with the Guaranty Trust Company must, of course, if it ever existed, have been entered on the Trust Company's books. It was the burden of Respondent to produce this. It was not produced. The point simply was not made or thought of at the trial, and Petitioner never was given a chance to produce, if needed, rebutting evidence. It is now raised for the first time, four years after the evidence was closed.

(d) To suppose that any of those three men would make such a gift or loan, is to suppose a business absurdity.

Take them one by one. Mr. Libbey, it is true, owned a half of Sterling stock, but Thatcher Company, in

which he had no interest, owned the other half. Would he have done this for a company which he did not even control? He took no evidence of loan, no collateral, no security. To be sure, it might be replied, that in the basic contract, Sterling guaranteed the payment of these purchase notes, and that this was his security. But Sterling had no money (R. 292, Opinion of Court). Its guarantee was worthless. Even if it can be held, as Respondent claims, that Sterling had an equitable title to the stocks, still these were then a very doubtful asset. They might, if properly handled, represent successful concerns and they might not; according to whether that very combine could be financed. Thatcher Company was shy of them. It refused to touch the proposition until it was properly financed (R 218). And, it may be added, Sterling's "equitable title" to these stocks was itself dubious. The existence of this present suit sufficiently illustrates this point.

Do business men part with large sums of cold cash upon inducements of this sort?

Again, take Mr. Ford, likewise liable on all the notes. He had no interest whatsoever in Thatcher Company or in Sterling, and Sterling's guarantee would have looked as inadequate to him as it would to Libbey.

Again, take Mr. Baldwin, likewise liable, and, under one alternative, liable to Sterling itself and all the others. He had less than a one-half interest in Thatcher Company and none in Sterling, and no more guaranty and, in the alternative which actually came to pass, he had no guaranty at all, but only an enormous liability. Why should he risk his entire personal fortune for the benefit of the other stockholders of Thatcher Company?

Men do not do business in that way. If they lend money they take notes for it. They do it, and properly, for personal advantage. They expect security and commensurate return. They take an ample margin of un-

questionable collateral. None of these commonplace factors appear in this alleged and remarkable gift or loan.

(e) This alleged gift or loan to Sterling was, according to Respondent's brief, for the real, final advantage of Thatcher Company. To establish this is the whole effort of Respondent's brief. Two of these three men, Libbey and Ford, had no interest in Thatcher Company. Baldwin had less than one-half interest. If this loan were really for the benefit of that Company, as Respondent must claim, then these men would certainly have asked for security from Thatcher Company, a real concern and the real party in interest. Libbey or Ford had no such security. As to Baldwin, he testified (R. 122; 198) that he had no recourse at all to Thatcher Company. In fact he carefully kept Thatcher Company out of it. (R. 146; 218).

(f) Furthermore, Baldwin, if Libbey withdrew, was the ultimate guarantor of everybody, including Sterling. The basic contract (R. 37) states: —

> "In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith of each and every of the other parties hereto."

Sterling was one of those other parties and was included in this guaranty by Baldwin. In short, Baldwin was, and was plainly intended to be, the ultimate guarantor, and so by fair implication of law and common sense, the ultimate inheritor and real party in interest, when Libbey and Ford withdrew.

Does this position of Baldwin fit in in any way with Respondent's theory of the loan or gift to Sterling and the resulting dominant position of Sterling?

Of all the provisions of the basic contract, this underlying liability of Baldwin was the one thing that took complete effect. Libbey and Ford withdrew.

"They dropped the whole load on my shoulders and I sweat" (R 110). Then Baldwin, in full control did finally, after enormous efforts, make into a reality a proposition theretofore mainly on paper. He was the man who accomplished the crucial and difficult act of financing; and put the whole thing on its feet.

The underlying personal liability of Baldwin (after Libbey's withdrawal) for the whole affair is likewise taken for granted by everyone who was involved in taking the evidence.

That liability is stated at least ten times (R. 110, 112, 122, 123, 132, 144-145, 146, 198, 199, 215-218). On p. 132, Mr. Sheppard, Presiding Examiner, asks:

> "*Question.* You under your contract assumed their rights and benefits and liabilities under the three notes?"
>
> "*Answer.* (By Mr. Baldwin) Yes, Sir" (R. 132).

Is it probable, in view of these circumstances, that Libbey, Ford and Baldwin started off in this matter with the purpose of blindly turning over everything to Sterling?

(g) Finally, the basic contract, supposed to recite the whole situation, states in detail numerous financial facts. But it has no word anywhere of any loan or gift to Sterling; not even in the clause where Sterling gives the guaranty and where such loan should certainly have been referred to as part consideration for the guaranty.

It would take pretty stiff evidence, in view of the above facts, to convince one of any such gift or loan; and it is respectfully submitted that still stiffer evidence

is in fairness required to justify the practical dissolution of the Thatcher Company.

11. Failure of Respondent's Chain.

So much for the first and absolutely necessary link in Respondent's chain — the attempt to connect Thatcher Company with these stocks through Sterling Company. It does not hold.

(a) The evidence cited by Respondent for this proposition is secondary, doubtful, and insufficient. The preponderance of it positively supports Petitioner. The only proper source was not resorted to.

(b) The three men did not give or loan to Sterling unsecured and unevidenced, $1,610,000. They kept the affair in their own hands, as their own personal venture (our primary brief pp. 27-28).

The idea of such a gift or loan is incredible. Men do not do business in such fashion. They do not deal in such large sums without some written record. Not even the basic contract refers to it.

(c) Sterling never bought the stocks, therefore, for the sufficient reason that it had not the money to buy them. The majority opinion of the Court below states (R. 292) — "The Sterling Company had no money, for it had expended its whole capital of $500,000 in supplying a part of the purchase money for the stocks."

(d) The underlying liability assumed at the start on one alternative, by Baldwin, and later made good by him, negatives the idea that either he or the others could have contemplated any blind and absolute surrender of the whole affair and its future to Sterling.

(e) Libbey, Ford and Baldwin personally furnished three quarters of the price of the stocks, and bought and held them as their own personal venture, later becoming the sole undertaking of Baldwin. Sterling never had any control of the stocks in question.

12. The Second Link.

The second link in the chain, namely the acquisition by Thatcher Company of Sterling, requires little comment, and with the first link broken, is anyhow useless.

There seems to be, indeed, in Respondent's view some question as to dates.

(a) Everyone agrees that on August 28, 1919, Thatcher Company held exactly 50% of the Sterling stock. This, of course, was not control. Libbey held the other half.

(b) It is also agreed that on June 4, 1920, Libbey's share of Sterling stock was transferred to Thatcher Company, giving the latter complete control. But it seems that Respondent claims an earlier date than June 4, 1920, for such complete control, apparently as early as December 11, 1919. Its brief (p. 32) speaks of an "agreement to purchase Libbey's stock." We do not grasp this. *Baldwin* so agreed, but Thatcher Company did not. It was not even a party to the basic contract. Nothing in that contract could transfer the Sterling stock, or anything else, to Thatcher Company.

Possibly this is simply a part of the general view of Respondent that Baldwin *was* Thatcher Company. Its brief practically says so (p. 35). Of course this was not so. (See pp. 26-27 below) As our primary brief pointed out Baldwin did not control Thatcher Company (R. 125-6; 130) Also, that in this whole matter he was acting for himself and expressly kept Thatcher Company out of it. (R. 146).

Whatever the date, it is of little significance. All that Sterling ever had was an unexercised option on these stocks. An option is not acquisition, and that is the utmost that Thatcher got by its control of Sterling.

13. Thatcher Company's Small Interest.

Of course, from the start, Thatcher Company always had a minor interest, a small venture in the matter. It invested $250,000 in Sterling stock; it paid certain incidental expenses; it took over the Hamilton license (a good investment in any event, and also a wholly separate transaction) (R. 148). It lent money to Woodbury and Travis Companies and borrowed money from Essex Co., all ordinary business transactions, denoting interest, but not approaching control.

As the basic contract shows (R. 36), it was originally expected that a new parent company would ultimately take over, not only Essex, Lockport, Travis and Woodbury Companies but also Thatcher Company itself. Thatcher Company therefore doubtless felt it wise to have a small stake in the venture. But it was, also wisely, not prepared to endanger its future by any commitment to the overwhelming load of the whole combine, unfinanced. "It would swamp them if it did," as one of its directors said (R 218).

14. "The Subtle Plot."

It is believed that Respondent, misled by the surface complexities of the affair, has mistaken form for substance; has not allowed for the business uncertainties which confronted the three men at the start; and has thus attributed to subtle and almost supernatural forethought a plan which was simply the best that these men could improvise in haste for their personal venture. Being a human improvisation, it had a lot of loose ends. These men were willing to take a personal risk to accomplish a large result. But they proposed to control it until they knew where they were coming out. Their real expectation was the creation of a parent company to absorb Thatcher Company and all the rest. But Libbey considered the Hartford patents an essential

part, and would get out if these proved unobtainable. Therefore they had to provide a " residuary legatee " for this contingency and Baldwin was willing to take this risk, which then doubtless, seemed to him remote. Respondent doubts the alternative nature of the plan. (Resp. brief p. 40). It seems to us self-evident. There were two diverging paths which might be followed; one with Libbey and Ford, the other without them. The basic contract speaks for itself in this respect.

Sterling Company was thus a tentative paper entity, a step toward the expected " Libbey combine," but it never got any real substance. It certainly at least was not intended as a cover, or an evasion. Respondent devotes much space to this (its brief pp. 41-44); to our mind quite unnecessarily. The three gentlemen in question and their legal advisers were certainly not so ingenuous as to hope to cover up an illegal action by such a flimsy device. Petitioner has never tried to do so. Sterling was created for a proper purpose which never was realized. It had no substance, played no part and disappeared when Libbey and his large combine idea fell out; it left the field then, obligations and rights alike, to Baldwin.

15. Realties, Not Form.

There is a natural tendency for the outsider in a case like this, to mistake form for reality, and to go into elaborate speculations, which are only afterthoughts. There were only three realities here, Thatcher Company; the group of three men; and the four companies. In order to combine Thatcher Company and the four companies, and possibly Hartford patents under any form of organization, required, first of all, *some group analogous to the promotion underwriter, who would take an interim risk and hold things pending financing, as Thatcher Company could not and would not do.* The

three men took that risk; two of them withdrew, dissatisfied. The third, bound by his contract, went on, and by hard work constructed the final keystone of the arch, permanent financing. Meanwhile he had, and had to have complete control. If the financing had failed Thatcher Company would never have had any further dealings with the affair. Baldwin succeeded, turned the property assets over lawfully to Thatcher Company, and in exchange got release from his burden of obligations, making no profit for himself.

In this set of hard realities Sterling has no place. It had no assets, no credit, no power. All sorts of fine-spun legal theories may be evolved as to its possible rights and equities. It accomplished nothing and amounted to nothing. Baldwin was the reality, the effective force that turned a paper plan into a working concern.

The dissenting opinion of Judge Buffington in the Court below does just what we are attempting, far less ably, to do in this Section. It strikes through complexity and form to the essential and permanent realities.

"The necessity for the prompt exercise of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him (Baldwin) together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock acquisition plan, but in my judgment, the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock" (R. 299).

COMMENTS ON SPECIFIC POINTS

Following are comments on special points in Respondent's brief.

16. Baldwin's Ultimate Liability.

Respondent throughout its brief has incorrectly understood the position of Mr. Baldwin under the basic contract, especially the fact that on Libbey and Ford's withdrawal, Baldwin took over the liabilities of all parties, *including Sterling's*. This fact was extremely important.

On pp. 12-13 of Respondent's brief, where a summary of the contract is given, this feature of Baldwin's underlying guarantee is omitted. The same omission occurs in another connection on p. 27 and again on pp. 37 and 40. Baldwin's guaranty is there referred to as being simply "additional" to Sterling's, instead of being, as was the fact, a guaranty underlying everything else, and carrying with it very broad liabilities, and resulting, finally, in real achievement. This consistent omission is serious. It probably explains in part Respondent's failure to grasp the situation as we understand it. It was this underlying guaranty of Baldwin that shows both the alternative nature of the contract, the personal character of the venture, and the true intent of the parties, namely, that if Libbey withdrew, Baldwin was to take over everything, rights as well as obligations. Obviously, Baldwin, who had good reason to know the intent of the contract, so understood it. When Libbey withdrew, Baldwin knew that on him alone rested the whole burden and his long anxious campaign of financing, plainly driven by that knowledge, is convincing proof of the situation.

It appears again and again in the testimony and is assumed as an obvious fact throughout (R. 98, 110, 122-123, 132, 145-6, 198, 199, 215-18). What is

this, if not an alternative? If the "Libbey combine" succeeded, Sterling was the party liable. If not, and Libbey withdrew, Baldwin assumed Sterling's liabilities as well as all others. The two situations are certainly not concurrent; they are alternative.

17. Misstatement of Notices of Withdrawal.

Respondent's brief (p. 13) states that the notices of withdrawal of Libbey and Ford were addressed to Thatcher Company as well as to Baldwin (citing R. 40, 41). This is a mistake. They were addressed solely to Baldwin. Baldwin so testifies (R. 129). Thatcher Company's name appears therein merely as part of Baldwin's office address.

18. Woodbury Company.

Respondent includes the acquisition of Woodbury Company stock as part of the case. It was dismissed by the Court below, on the ground that Woodbury's competition in milk bottles was negligible. Woodbury, long prior to the beginning of this affair, had decided to abandon the milk bottle business. Its main line was in condiment ware. In 1917 it had agreed to take Hartford-Fairmont machines to the full extent of its furnace capacity (R. 188-189), under licenses which expressly prohibited their use for milk bottles (R 181; 189). The total milk bottle production of the United States in 1919 was over 1,000,000 gross (R. 200). In 1919, Woodbury made only 8,000 gross (R. 189). By July 31, 1919, it had ceased that production entirely (R. 188), and had on hand a total of only 500 to 1,000 gross, mainly of "mis-lettered" and "off-capacity" bottles (R. 188). This remnant represented then its total potential competition. The Clayton Act requires a substantial lessening of competition. Nothing that was done with Woodbury could so be described.

19. Baldwin's "Admissions."

Respondent's brief quotes Mr. Baldwin's report to Thatcher Company stockholders of February 1920, (pp. 30; 36), and his agreement with the bond buyers in April 1920, (p. 14). Statements therein are urged as "admissions" against Respondent. This matter is sufficiently covered by our primary brief (p. 32). They are the statements of Baldwin only. They cannot bind Thatcher Company. They are obviously inaccurate in many respects. They are simply a fair sample of the business man's statement, interested only in a general result, and disregarding exact matters of methods. It would surely be unjust to base a grave injury to Thatcher Company in any degree upon the careless statements of an individual, neither authorized nor accepted nor ratified by the company. They cannot override plain primary documents of title, transfer and contract which form the actual legal basis of the transaction.

20. Axton Options.

The brief (p. 26) says that Sterling purchased the Axton options on the stocks (citing R. 40), and stating that it paid $100,000 for them. This is a mistake in fact. R. 40 does not state this, and there is no proof that Sterling owned the options. The real question is, who exercised them, and especially, who furnished the money for the option price? Libbey, Baldwin and Ford did. On page 93 of the record, Counsel for Commission asks Mr. Baldwin:

> "Was it finally agreed between yourselves and associates that you would own the options held by Mr. Axton?"
>
> "*Answer.* Mr. Libbey and Mr. Ford and myself; yes, sir."

21. Baldwin's Control of Four Companies.

That brief on p. 33 ignores, as it does throughout, the unescapable record fact that Baldwin and his nominees owned and had record title to every share of these stocks from December 8, 1919, (R 211; 224) until July 3, 1920. Baldwin was absolute master of the whole proposition. This control made it possible for him to deliver the business to Thatcher Company when it paid off his note obligations.

22. Assets Were Transferred July 3, 1920.

An error appears on p. 29 of that brief. It is there asked, by way of argument " How is it possible to account for the transfer by these companies of all their properties and assets * * * to the Thatcher Company for the nominal consideration of $1.00 some days before the day (July 3, 1920) when the notes were paid by it?"

Respondent evidently forgot here what it had itself stated earlier in its brief (p. 17) that the deeds and bills of sale of these assets, although dated in June, only " took effect upon delivery." Delivery was on July 3, 1920, the same day when the notes were paid (R. 225). Baldwin, of course, saw to it that these assets which he controlled should not be transferred till his note obligations were paid off — the sole consideration for the transfer. Thatcher Company only got these assets on July 3, 1920, and on that day, by check for $1,634,955 which is in the record (R. 163) paid, and for the first and only time paid, its price for them.

23. Baldwin Not Acting As Agent.

That brief (p. 35) asserts that Baldwin " must have been from the first, acting on behalf of Thatcher Company." This is wholly without basis. If anything is clear in this case, it is Baldwin's independent position.

Our primary brief deals with this on p. 31. If he was agent, why did he keep Thatcher Company out of the affair? (R. 198) If agent, why did he not call on his principal to protect him in his tremendous obligations, as it would have been bound to do? Why did he take no guaranty or security from Thatcher Company? (R. 198). Why was there no corporate action of any sort over a period of ten active months, either by way of authorization, instruction or assertion of rights?

The brief, similarly, on p. 33, states that on December 5-8, 1919, all these stocks were transferred to "officers and employees of the Thatcher Company." They were, as a matter of fact, all issued to Baldwin and the men named by him, and were entirely in his personal control. Unless it can be shown that Baldwin was in this matter acting for the Thatcher Company (and it cannot, as stated just above), the fact that he and his nominees were connected with Thatcher Company has nothing to do with the case.

There is also, on p. 26 of Respondent's brief, the remark that the Court below found that the original owners of the stocks "parted with title to them to the Sterling Company," citing R. 328-330. We find nothing in these pages to support that conclusion.

24. Value of Sterling's Guaranty.

This is referred to on p. 36 of Respondent's brief. It has already been dealt with on p. 15 above.

25. Baldwin's Rights By Subrogation.

The brief (p. 37) discusses Baldwin's rights in the stocks which correspond to his duties as guarantor. It implies that if a man assumes the obligation of another on notes secured by collateral and finally pays those notes, he has no right in that collateral, except by special agreement.

This, we submit, is an error of law. He does get such collateral by virtue of the well-established principle of subrogation.

> *27 American and Eng. Ency., 207.*
>
> "The general rule is that a surety who pays the debt of his principal will be subrogated to all the securities, liens and equities, rights, remedies and priorities held by the creditor against the principal."
>
> *Brick v. Freehold National Bank, 37 N. J., Law 307.*

A surety on a note defended a suit against him by the holder of the note, which was secured by collateral. The surety claimed that the creditor had not first sold the collateral.

Held. No defense. "The surety may at any time after the debt becomes due and owing discharge it and take the collateral."

26. Thatcher Company Did Not Pay for Stocks.

On pp. 38-39 of that brief there is a considerable argument to the effect that Thatcher Company had to pay off the notes to get the stocks. This is begging the question. Thatcher Company did not want the stocks, and never got them until they had been stripped of all substance. What it wanted and got was business assets.

27. Competition Ceased January, 1920.

The argument on p. 44 of that brief as to cessation of competition is not tenable. The Commission itself found (R. 242) that all competition between all of these companies ceased January 1, 1920. Thatcher Company owned only 50% of Sterling stock up to June 4, 1920. This is not control, even if Sterling did own the 4 companies. Therefore, Thatcher Company could not have caused such competition to cease in January, 1920.

PART II.

POWERS OF THE COMMISSION

1. We shall not try to add on this subject anything to what has been said in our primary brief on pp. 39-54, except to comment on a few points in Respondent's brief.

2. That brief (p. 47), asserts that the Clayton Act " expressly confers authority " to require the divestiture of the rights which the certificates of stock represent.

We do not understand this assertion. The Clayton Act (Section 11) simply says " divest itself of stock held." There is no mention of rights.

There is certainly no " express " grant.

3. The only citation of legal authority which Respondent's brief makes on the vital question of the extension of statutory powers by implication, is to a text book. The authority is highly respectable, and while very broad in its assertion, is to the point.

But over against it stands the long line of great cases decided by this Court in the past 30 years, and cited in our primary brief (pp. 46-48). These cases seem to Petitioner seriously to modify the position of the text book cited.

There is no valid distinction in these cases such as Respondent attempts to make, between the power of regulation and the power of remedy. Regulation is remedy. Regulation can be carried to any extremes if we once grant that statutory remedies are indefinitely expansible by implication.

4. It is believed that all the other arguments in this portion of Respondent's brief have been sufficiently discussed already in our primary brief.

The decision of the Court below should be reversed.

HERBERT KNOX SMITH,

Counsel for Petitioner.

No. [redacted] 213

In the Supreme Court of the United States

OCTOBER TERM, 1926

THATCHER MANUFACTURING COMPANY, Petitioner

v.

FEDERAL TRADE COMMISSION, Respondent

PETITIONER'S INDEX TO EVIDENCE

THE CASE, BROTHERS & BRADFORD CO.
HARTFORD, CONN.

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Federal Trade Commission

vs.

Thatcher Manufacturing Co.

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H-F = Hartford-Fairmont Co.
"Milks" = Milk bottles
"Stocks" = The stocks whose acquisition is charged
Th. Co. = Thatcher Mfg. Co.

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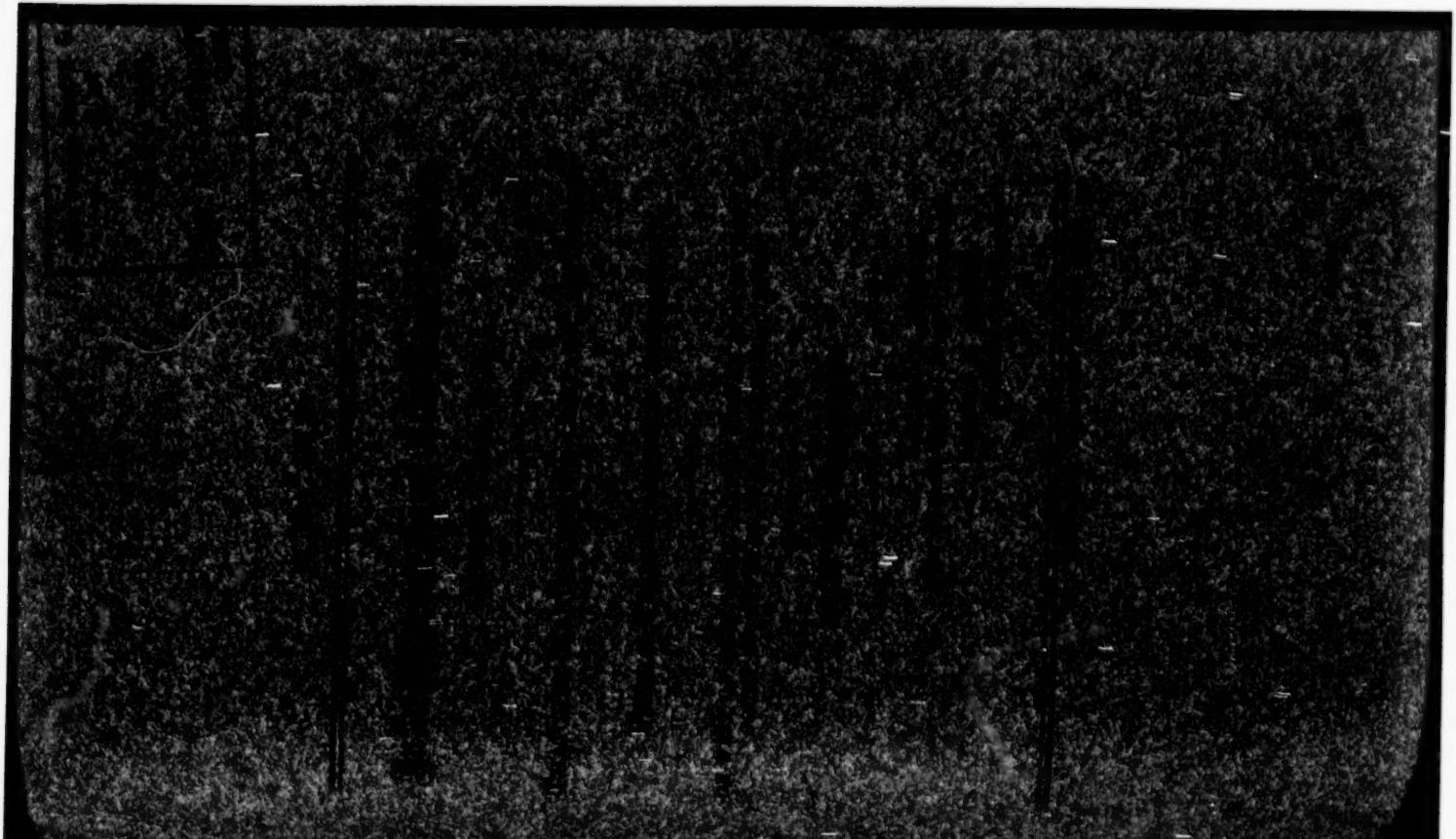

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 213

THATCHER MANUFACTURING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Court below is found in 5 Fed. (2nd) 615. It also appears at pp. 317–334 of the printed transcript.

GROUNDS OF JURISDICTION

This was a petition by the Federal Trade Commission (hereinafter called the Commission) to the Circuit Court of Appeals for the 3rd Circuit to enforce an order of the Commission entered under authority of Sections 7 and 11 of "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," popularly known as "the Clayton Act" (38 Stat. 730). The jurisdiction of the Court below was invoked under Section 11 of that Act.

The Court below on April 16, 1925, entered a decree affirming paragraphs 1 and 3 and setting aside paragraph 2 of the Commission's order (R. 299–300); on June 2, 1925, denied the petition of the Thatcher Manufacturing Company, hereinafter called the Thatcher Company, for rehearing (R. 340); and on June 12, 1925, denied a motion of the Commission to re-form the decree (R. 340).

Jurisdiction of this Court is invoked under Section 11 of the Clayton Act (38 Stat. 730) and under Section 240 of the Judicial Code as amended by the Act of February 13, 1925 (*Federal Trade Commission* v. *Gratz,* 253 U. S. 421).

STATEMENT

This case comes to this Court on a writ of certiorari to review a judgment of the Circuit Court of Appeals for the 3rd Circuit, which affirmed in part an order of the Commission entered against the Thatcher Company, requiring it to divest itself of the share capital and physical properties and assets of certain corporations which the Commission found had been acquired in violation of Section 7 of the Clayton Act. The order of the Commission as affirmed below required the petitioner to—

> 1. Cease and desist from the ownership, operation, management, and control of the assets, plants, properties, rights, and privileges which were at the time of their acqui-

sition in the ownership, possession, management, and control of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, together with all improvements and additions made to such assets, plants, and properties up to the date of this order, which are hereby declared to have been acquired and are now held in violation of law or as a result thereof; and

2. Divest itself of all capital stock of the Woodbury Glass Company now held and owned by it, and all right, title, interest, and claim therein, which said stock is hereby declared to have been acquired and is now held in violation of law or as a result thereof; and

3. Submit within three months from the date of this order, for approval by the commission, a plan for the performance by the respondent of the terms of this order, jurisdiction for this purpose being hereby retained. (R. 249–250.)

The Thatcher Company declining to obey the order, the Commission applied to the Court for its enforcement.

The Court below affirmed the order with respect to the Essex, Travis, and Lockport companies, but set it aside with respect to the Woodbury Company, holding that the number of milk bottles manufactured by the company was so inconsiderable that the lessening of the competition resulting from the purchase of its stock was not substantial. (R. 298–299.)

THE ISSUES

Counsel for the Thatcher Company makes but two contentions in his brief: First, that the Thatcher Company did not acquire directly or indirectly the share capital of the four companies which it is charged in the complaint with acquiring; and, second, that if the Thatcher Company did acquire the share capital of the four companies it purchased also the physical properties, assets, and good will of three of them, and that the Clayton Act does not confer upon the Commission any authority to compel the company to divest itself of these properties and assets. While these are the issues presented in the brief for the Thatcher Company, and the brief for the Commission will be devoted chiefly to a discussion of them, brief reference is made to other points which it is deemed necessary to establish in order to show a violation of Section 7 of the Clayton Act.

THE FACTS

The Commission's Findings as to the Facts appear on pp. 232–249 of the Record. The Trade Commission Act provides that these findings shall be conclusive if supported by evidence. The Court below held:

> The order was made on elaborate findings of fact based mainly on a stipulation as to facts entered into by the parties and on other matters obtained from records which the respondent freely opened and made available. There is therefore little dispute about the

facts and no trouble in deciding that the Commission's findings are, except in one matter, sustained by the evidence. (R. 318.)

The finding of the Court below is entitled to the presumption of correctness which is given to the conclusions of a court after careful consideration of the record. (*United States* v. *United Shoe Machinery Company*, 258 U. S. 451, 455.) The single matter referred to by the Court as not supported was the finding that the acquisition by the Thatcher Company of the stock of the Woodbury Company substantially lessened competition between the latter company, the Thatcher Company and the other companies whose stock it acquired. (R. 334.)

The findings recite a chronological history of the transactions which constitute this case, and this statement of facts must be largely a résumé of those findings. The evidence consists of the testimony of five witnesses and a stipulation of facts to which exhibits numbered A to Z–10, inclusive, are attached.

1. Competition in interstate commerce in the milk-bottle business prior to the events which form the basis of this case

Glass bottles were originally made by hand process. This consisted in providing a large tank of molten glass from which a sufficient portion was removed to make a bottle of the desired size. This was originally done by a man with an instrument or

tool called a blow-pipe. This portion of molten glass when removed from the tank was placed in an iron mold where air pressure was used to expand the molten glass to the size of the mold. This latter process was what is known as "blowing." The process, therefore, consisted of melting glass, removing it from the tanks to the mold, and the blowing of the glass to fill the mold, thus making the bottle. (R. 117–118.)

By the Spring of 1919, two automatic bottle-making machines, each operated as a single unit and performing both of the operations above described, had been patented. (R. 92.) The first of these machines appeared some time between 1900 and 1903, and was known as the Owens Machine. The patent was owned or controlled by the Owens Bottle Company, one of the largest, if not the largest, bottle-manufacturing concerns in the United States. The Owens Company in 1905 granted to the Thatcher Company an exclusive license to use the Owens bottle-making machine for the manufacture of *milk* bottles in the United States. (R. 87–88.)

In 1917 the other patented automatic bottle-making machine operating as a single unit appeared. This was known as the Hartford-Fairmont Machine and was owned by the Hartford-Fairmont Company. (R. 90, 91.) This company licensed four companies—the Essex Glass Company, the Travis Glass Company, the Lockport Glass Com-

pany, and the J. T. & A. Hamilton Company—to use this machine in the United States in the manufacture of milk bottles, each of these licenses providing that only the four companies named would be licensed to use this machine in the manufacture of milk bottles. (R. 91, 120.) Thus it appears that the Thatcher Company had the exclusive right to use the Owens Machine in the manufacture of milk bottles, and the four companies last above named had together the exclusive right to use the Hartford-Fairmont Machine for making milk bottles. While there were other machines which could be used to gather the molten glass from the tank, and still others which performed the forming function, these machines could not be operated as economically as either the Owens or Hartford-Fairmont Machines. (R. 91, 119.) It is proved in this case that the Thatcher Company with the use of the Hartford-Fairmont Machine could manufacture milk bottles at a cost of 50¢ per gross less than it could even with the Owens Machine. (R. 43, 117.)

At the time when the events which form the basis of this suit transpired, the Thatcher Company was manufacturing approximately 40% of the milk bottles made and sold in the United States. The four companies licensed to use the Hartford-Fairmont Machine were manufacturing more than 30% of the milk bottles made and sold in the United States. The purchase by the Thatcher Company of the stock of the Essex, Travis, and Lockport companies and of the milk-bottle business and

license of the J. T. & A. Hamilton Company, which is the basis of this proceeding, placed in a single control from 70 to 90% of the interstate commerce in milk bottles in the United States and the right to use in the manufacture of such bottles the only two effective, complete bottle-making machines.

The Woodbury Glass Company was engaged in the manufacture primarily of whiskey bottles, but was also manufacturing milk bottles to a substantial extent by hand processes and selling the same in interstate commerce. (Infra, p. 19.) It had a nonexclusive license to use the Hartford-Fairmont Machine in the manufacture of condiment bottles, whiskey bottles, etc. The stock of this company was also acquired by the Thatcher Company and in the same transaction by which, it is claimed by the Commission, the stock of the Essex, Travis, and Lockport companies was acquired. (Infra, p. 19.)

2. Principal transactions which constitute the basis of the case

On August 28, 1919, the Thatcher Company, the Essex Glass Company, Travis Glass Company, and Lockport Glass Company were engaged in manufacturing milk bottles and in selling such bottles in interstate commerce in competition with each other. (R. 87, 88, 89.) Woodbury Glass Company was engaged in manufacturing bottles of various kinds, principally whisky bottles, but was also manufacturing milk bottles to some extent and selling them in interstate commerce. (R. 169, 170, 172, 177, 231.)

In the early part of 1919 I. T. Axton, president of, and controlling stockholder in, the Woodbury Glass Company, held options at prices therein named on the capital stock of Essex Glass Company, Travis Class Company, and Lockport Glass Company, and an option on the Hartford-Fairmont machine and license and milk-bottle business of the J. T. & A. Hamilton Company. (R. 167.) In the summer of 1919, failing to merge the companies, Axton, shortly before his options expired, approached F. E. Baldwin, president of the Thatcher Company, and suggested that his options be exercised by the Thatcher Company or by Baldwin and associates. (R. 168.) Baldwin consulted with H. C. Mandeville, a director and general counsel of the Thatcher Company, and with E. D. Libbey, president of the Owens Bottle Company, the licensor of Owens bottle-making machines to the Thatcher Company. (R. 43, 93.) Owens Bottle Company offered no objection to the contemplated acquisition, but advised the Thatcher Company to purchase the companies and acquire the exclusive rights to the Hartford-Fairmont machines for manufacturing milk bottles. (R. 43.) Libbey agreed to assist in securing the necessary money and also to go into the deal provided he could acquire the Hartford-Fairmont patents. (R. 199.) The consultations and negotiations between Baldwin, Mandeville, and Libbey resulted in the conclusion by them to exercise the options held by Axton and acquire

the stock of Essex Glass Company, Travis Glass Company, Lockport Glass Company, and Woodbury Glass Company, and the milk-bottle business, license, and machine of the J. T. & A. Hamilton Company. (R. 134.) The options held by Axton expired September 1, 1919 (Exhibits A, B, C, D, E, R. pp. 30–34), and the conclusion to exercise the options was reached in August, 1919. (R. 144.) The remaining option time was short, and if the desired rights were to be secured a quick accomplishment was essential.

The first formal act in the plan was made when Mandeville incorporated Sterling Glass Company on August 23, 1919, with an authorized capital of $600,000, of which $500,000 was issued at par for cash, the Thatcher Company and Libbey each contributing $250,000 and taking one-half the stock. (R. 95.) On August 27 and 28 Axton assembled the stockholders of Essex Glass Company, Travis Glass Company, Lockport Glass Company, and Woodbury Glass Company, in New York City, at the offices of the Guaranty Trust Company. (R. 94, 173, 174.) On the same date Baldwin, the president of the Thatcher Company; Mandeville, a director and its general counsel; Libbey, president of Owens Bottle Company; and Ford, a friend of Libbey and a large stockholder in the Owens Bottle Company, met in another part of the same offices. (R. 96.) Representatives of the Guaranty Trust Company acted as intermediaries between the two assemblies. (R. 134, 135.)

On August 28, 1919, Baldwin, Libbey, and Ford, on behalf of Sterling Glass Company (R. 94), executed their three separate promissory notes to the Guaranty Trust Company for a total of $1,510,000, and each indorsed the notes of the other two so that they were equally liable on all three notes (R. 94, 95). The proceeds of these notes and the $500,000 of Sterling Glass Company were deposited in the Guaranty Trust Company (Exhibit H, R. 38–39) and used by Sterling Company, on August 28, 1919, to acquire all of the stock or share capital of Essex Glass Company, Travis Glass Company, and Lockport Glass Company, all the common capital stock of Woodbury Glass Company, and the license, machine, and milk-bottle business of the J. T. & A. Hamilton Company. (R. 95, 96, 113, 134, 135.) The stock certificates held by the various stockholders in the several companies were indorsed in blank by the respective vendors, and held by the Guaranty Trust Company as collateral security for the three notes of Baldwin, Libbey, and Ford. (R. 96, 113.) The transaction with the J. T. & A. Hamilton Company included no stock or share capital, but was an outright purchase and sale of the license, machine, and milk-bottle business of the J. T. & A. Hamilton Company, and such rights and properties were transferred directly to the Thatcher Company alone. (Exhibit H, R. 40, 97, 148.)

Immediately after the stock of the four companies was acquired, Baldwin, president of the

Thatcher Company, requested the officers of the four companies to remain in their respective positions and continue the operation of the companies until further direction. (R. 175.) The written resignations of all officers of the four companies were taken by Baldwin to be exercised at his option. (R. 39, 142, 175.)

On the same day, August 28, 1919, Baldwin, Libbey, Ford, and Sterling Glass Company made a written agreement which described the three notes and the collateral held therefor, and certain rights and obligations of the parties. (Exhibit G, R. 36–38, 96.) That agreement stated that the purpose of the parties was, at a later date, to organize a permanent company to take over the assets of the four companies and also the Thatcher Company, and recited that Libbey entered the agreement in contemplation of the purchase by him of the Hartford-Fairmont patents. The parties agreed that the stock just acquired should be held together and not sold by any of the parties without the consent of the others, and that Ford and Libbey might retire from the transaction and from Sterling company at their option. The contract also provided, among other things:

> (a) That Sterling Glass Company assumed all liability of the other parties upon the three notes of Baldwin, Libbey, and Ford and guaranteed the other parties against liability on said notes, and that "upon the payment of the said notes all of the collateral

thereto shall become the property of Sterling Company."

(b) That Libbey and Ford might wholly retire from Sterling Company and from the transaction at their option.

(c) That upon withdrawal of Libbey and Ford, Baldwin would assume all their liability and relieve them from liability on the notes, and Libbey would be repaid the $250,000 contributed by him to the capital stock of Sterling Company.

(d) That upon the repayment of said moneys and release from indorsements and liability, Ford and Libbey would release to Baldwin all interest in the stock of Sterling Company and transfer the same to Baldwin's nominee, and Baldwin might proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets as he saw fit.

Libbey failed to acquire the Hartford-Fairmont patents. (R. 112, 136, 144.) Separate written notices of their desire to retire from the transaction and be released from further liability were addressed by Libbey and Ford to Baldwin and the Thatcher Company under date of December 11, 1919. (Exhibits I and J, R. 40–41.) Libbey's stock in Sterling Glass Company was transferred of record to the Thatcher Company on June 4, 1920 (R. 158, 159), and on June 7, 1920, the Thatcher Company paid Libbey $261,750 for his stock and interest on the money paid for it. (R. 162,

163.) The notes to the Guaranty Trust Company, whereon Libbey and Ford were makers and indorsers, remained unchanged and undischarged until paid by the Thatcher Company on July 3, 1920. (R. 153.)

To finance the indebtedness under the notes to the Guaranty Trust Company, an agreement was made on April 10, 1920, by Baldwin with certain bond buyers of New York City, by which it was provided that the Thatcher Company increase its capital stock $625,000 and issue $2,000,000 of 7% gold bonds, which the bond buyers agreed to purchase. In that agreement Baldwin is called the "Seller," the bond buyers are called the "Buyers," and the Thatcher Company is referred to as the "Corporation."

The Thatcher Company's capital was increased accordingly. (R. 137.) On April 12, 1920, the stockholders of the Thatcher Company authorized an increase in its capital stock as stipulated. (Exhibit M, R. 53.) The additional stock in the Thatcher Company was issued for cash, and from the proceeds thereof the Thatcher Company paid Libbey $261,750 on June 7, 1920, for the sum paid by Libbey for capital stock of Sterling Glass Company, with interest thereon. (R. 138, 162, 163.) On June 3, 1920, a special meeting of the directors of the Thatcher Company directed the proper officers of the Thatcher Company to acquire Libbey's 2,500 shares of stock of Sterling Company for $250,000 with interest from August 27, 1919. (Ex-

hibit Q, R. p. 59.) Before Libbey was paid, the stock in his name was transferred of record to the Thatcher Company on June 4, 1920 (R. 158), and thereupon the Thatcher Company became the record owner of all the stock of Sterling Glass Company, except the eight shares issued in the names of its agents or employees (R. 159). On June 3, 1920, before Libbey's stock was transferred of record or paid for by the Thatcher Company, a written notice to Sterling Glass Company and its board of directors was given by the Thatcher Company and its agents or employees who held certain qualifying shares, reciting that all the stock of Sterling Glass Company had been acquired by the persons whose names were signed to the notice, and that they were desirous of having Sterling Glass Company dissolved and its property transferred to respondent. (Exhibit N, R. 54.) Thereupon Sterling Glass Company, by Mandeville, executed a bill of sale on June 7, 1920, conveying to the Thatcher Company all the property of Sterling Glass Company, including specifically the contract of August 28, 1919, and all rights and interests therein. (Exhibit P, R. 58.)

On June 7, Baldwin, Mandeville, Collins, and Niver, with the other persons holding qualifying directors' shares, addressed separate communications to Essex Glass Company, Travis Glass Company, and Lockport Glass Company, and their boards of directors, stating that they had acquired all the stock of such companies and desired to have

the companies dissolved and to have all property belonging to such companies transferred to respondent. (Exhibits S, T, X, Z–3.) Thereupon Baldwin, Mandeville, Collins, and Niver, as stockholders and directors of the respective companies, on June 11, 12, and 24, 1920, respectively, passed resolutions on behalf of each company providing for the transfer of the assets of Essex, Travis, and Lockport companies to the Thatcher Company and for the dissolution of such companies. (Exhibits T, Y, Z–4.) The deed and bill of sale from Essex Glass Company is dated June 17, 1920. The deeds and bills of sale from Travis Glass Company and Lockport Glass Company are dated June 25, 1920. Each deed and bill of sale was signed by Baldwin and Collins as president and secretary, respectively, of Essex, Travis, and Lockport companies, and recited a consideration of one dollar and other valuable considerations. (Exhibits V, Z–1, Z–6.)

In the meantime the bond issue provided for in the contract of April 10, 1920, was being accomplished. The Thatcher Company executed a mortgage or deed of trust conveying all its property and the properties of Essex Glass Company, Travis Glass Company, and the Lockport Glass Company, and the common stock of Woodbury Glass Company to the Guaranty Trust Company as trustees. The bonds to be secured by such mortgage or deed of trust were drawn and signed and dated April 1, 1920.

On July 3, 1920, Baldwin and Mandeville, representing the Thatcher Company, met the representatives of the bond buyers at the Guaranty Trust Company in New York City. (R. 160.) The bonds and the mortgage or deed of the Thatcher Company and the deeds and bills of sale from Essex Glass Company, Travis Glass Company, and Lockport Glass Company were produced and delivered to the bond buyers and took effect upon delivery. (R. 155–225.) The bond buyers thereupon delivered the proceeds of the bonds to the Guaranty Trust Company, and such proceeds were deposited in the Guaranty Trust Company to the credit of the Thatcher Company. (R. 160, 163.) Baldwin, as president of the Thatcher Company, drew a check in favor of the Guaranty Trust Company on that deposit for $1,634,955, in payment of the three notes of Baldwin, Libbey, and Ford, and interest thereon. (R. 143, 163.) The check was honored by the Guaranty Trust Company, and the three notes were marked "paid" and delivered to Baldwin and Mandeville (R. 153, 154), together with the certificates of stock of Essex Glass Company, Travis Glass Company, and the Lockport Glass Company held as collateral security therefor. The certificates for the common stock of the Woodbury Glass Company were retained by the Guaranty Trust Company under the terms of the mortgage or deed of trust. (R. 226–231.) The mortgage or deed of trust from the

Thatcher Company to the trustee and the deeds from Essex, Travis, and Lockport companies to the Thatcher Company were placed of record by the trustee. (R. 225.) The delivery of the deeds, mortgage or deed of trust, notes, and certificates of stock and the payment of the notes occurred contemporaneously and constituted one transaction. (R. 160, 225.)

In compliance with notices, requests, and resolutions of Baldwin, Mandeville, Collins, and Niver, and the other stockholders and directors holding qualifying shares, the dissolution of Essex Glass Company, Travis Glass Company, Lockport Glass Company, and Sterling Glass Company was accomplished. (R. 221.)

Sterling Glass Company was dissolved September 9, 1920. Lockport Glass Company was dissolved October 20, 1920. Essex Glass Company was dissolved December 18, 1920. Travis Glass Company was dissolved January 13, 1921. The contract of April 10, 1920, between Baldwin and the bond buyers provided that the bonds to be issued thereunder might be called on the terms and conditions and at the premium therein named. The bonds have been called and redeemed, and the mortgage or deed of trust has been canceled. (R. 184, 185.) The Thatcher Company now holds its properties and the properties of Essex Glass Company, Travis Glass Company, and the Lockport Glass Company, and the common capital stock of Woodbury Glass Company free from the lien or encum-

brance of such mortgage or deed of trust. (R. 226.) The Essex, Travis, and Lockport companies have been dissolved. The Woodbury Glass Company is still engaged in commerce, and all its common capital stock is owned by the Thatcher Company. (R. 203.) The Thatcher Company acquired the stock of Woodbury Glass Company through the transaction at the Guaranty Trust Company on August 28, 1919, and the subsequent proceedings. (R. 156.)

7. COMMERCE OF THATCHER, ESSEX, TRAVIS, LOCKPORT, AND WOODBURY COMPANIES, AND COMPETITION BETWEEN THESE COMPANIES PRIOR TO TRANSACTIONS HEREIN RECITED

In 1919 the Travis, Essex, and Lockport companies were engaged in the manufacture and in the sale generally in interstate commerce of milk bottles. The Travis Company sold generally throughout the United States, the Essex Company and the Lockport Company sold principally in the Central West and in the East (R. 89-90); but all of these companies sold to some extent throughout the United States (R. 229). All were in competition with each other in the sale of milk bottles in interstate commerce and in competition with the Thatcher Company in such commerce. (R. 89-90.)

The Woodbury Glass Company sold a substantial quantity of milk bottles in interstate commerce in 1919 up to August 28th of that year (R. 193), and at that time had contracts outstanding for the sale

and delivery of milk bottles in interstate commerce (R. 188–192). After August, 1919, its outstanding contracts for milk bottles were filled by the Thatcher Company. (R. 201–203.)

In August, 1919, upon the purchase by the Sterling Company of the stocks of the Essex, Travis, Lockport, and Woodbury companies, the Thatcher Company, through Baldwin, took over the conduct of their businesses and carried it on under the existing management until January 1, 1920, when the Thatcher Company brought the management of the four companies to Elmira, N. Y., and there managed and directed the businesses from its Elmira office. (R. 43, Ex. K.)

From the time the Thatcher Company acquired through the Sterling Company the stock of these four companies all competition between the several companies and the Thatcher Company ceased. (R. 21, par. 16; R. 77, 89, 90, 114–116.)

The Woodbury Company has not manufactured milk bottles since August 28, 1919, and since that date there has been no competition between it and the Essex, Travis, or Lockport companies or the Thatcher Company. (R. 194.)

In August, 1919, the Thatcher Company was producing about 40% of all the milk bottles produced in the United States. (R. 105.) In 1920 it produced over 70% of all the milk bottles produced in the United States. (R. 106.) In a letter dated April 23, 1920, Baldwin made the following state-

ment to the purchasers of the bonds issued by the Thatcher Company:

> Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful bottle-making machines devised and will manufacture and sell about 90% of all the milk bottles manufactured in the United States. (R. 80.)

The Thatcher Company is now the largest producer of milk bottles in the United States, producing more milk bottles than all other manufacturers combined. (R. 221.) This was brought about by the transactions stated.

SUMMARY OF ARGUMENT

1. The Thatcher Company, through its ownership first of 50% and later of 100% of the stock of the Sterling Glass Company, indirectly acquired the stock of the Essex, Travis, Lockport, and Woodbury Companies, and so directed the management of these four companies as to eliminate all competition between these companies and between them and the Thatcher Company. The Thatcher Company, by transfer and assignment to it of all rights and properties of all kinds of the Sterling Company, acquired directly the stocks of the four corporations named before the transfer to it of the properties of the Essex, Travis, and Lockport companies.

2. The Thatcher Company did not avoid the prohibition of the statute by creating the Sterling

Company, whose stock it owned, to purchase the stock of the Essex, Travis, Lockport, and Woodbury companies. The purchase of the stocks of these four companies by the Sterling Company, created by the Thatcher Company for that purpose, was an "indirect" acquisition of such stock by the Thatcher Company, and was as much in violation of the statute as if the Thatcher Company had purchased the stock of the four companies direct

3. The acquisition by the Thatcher Company of the stock of the four companies named eliminated competition between these companies and between them and the Thatcher Company, restrained trade, and tended to create a monopoly.

4. The statute authorizes the Commission to require a corporation illegally purchasing the stock of competing corporations to cease and desist from the violation of law and to divest itself of the stock so held in the manner and within the time fixed by the Commission. This direction as to divestiture of stock means to dispose of the rights in the corporation which constitute the stock—not of mere pieces of paper which represent nothing. If the word "stock" be not thus construed, still the express authority conferred upon the Commission to require the divestiture of the stock carries with it by implication whatever authority is necessary to make an effective order of divestiture.

The statute is remedial and should be liberally construed to effectuate the purpose of Congress.

The Thatcher Company can not take advantage of its own wrong and, by voting itself for a nominal consideration the assets and properties of the corporation, defeat the Act.

5. Section 7 of the Clayton Act was not intended to prohibit only the secret purchase and holding of stock—the operation of bogus independents. There is no word in the statute which indicates any such intention. The remedy provided—divestiture of stock—demonstrates that this was not its purpose. The hearing provided by the statute would necessarily make public the facts, and continued holding of the stock would cease to be illegal. The argument might have been tenable if the statute had been penal.

6. The jurisdiction of the various circuit courts of appeal under the Act is original. The statute confers "jurisdiction" of the proceeding and power to enter a "decree" affirming, modifying, or setting aside the order of the Commission. These courts have full jurisdiction to enter a decree upon the record which will effectuate the divestiture of stock directed by the Act, including the properties.

ARGUMENT

The first two paragraphs of Section 7 of the Clayton Act are as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such ac-

> quisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

The elements of the offense denounced by the statute are: (1) the acquisition, directly or indirectly, by a corporation engaged in interstate commerce of the whole or any part of the capital stock of another corporation engaged in interstate commerce, or the acquisition by a corporation whether engaged in interstate commerce or not of the whole or any part of the capital stock of two or more corporations engaged in interstate commerce; (2) that the effect of the acquisition may be: (*a*) to substantially lessen competition between the companies, or any of them; (*b*) to restrain trade in any section or community; or (*c*) to tend to create a monopoly.

The first element to be proven in this case, then, is the acquisition, directly or indirectly, by the Thatcher Company of the stock of the Essex, Travis, Lockport, and Woodbury companies. On this point we contend that on August 28, 1919, the Thatcher Company acquired indirectly, through its ownership of 50% of the stock of the Sterling Company, the share capital of the Essex, Travis, Lockport, and Woodbury companies, that by acquiring the stock of Libbey in the Sterling Company it acquired all of the capital stock of the four companies, and that by the transfer on June 7, 1920, of the assets and properties of the Sterling Company, including its rights under the contract of August 29, 1919, the Thatcher Company acquired directly the whole of the capital stock of the four companies. True it is that at this time there was a loan to be discharged at the Guaranty Trust Company to secure which the stock had been deposited, but the Thatcher Company nevertheless owned the stock.

I

The Thatcher Company acquired, through its ownership of the stock of the Sterling Glass Company, the stocks of the Essex, Travis, Lockport, and Woodbury companies which were purchased and owned by the Sterling Company

The Court below, without tracing the devolution of title through the entire transactions, found that the Thatcher Company acquired the share capital of the Essex, Travis, Lockport, and Woodbury com-

panies in violation of law. The Court found that on August 28, 1919, certain unnamed owners of the stocks parted with title to them to the Sterling Company, the stock being paid for in part by the proceeds of sale of the capital stock of the Sterling Company; and that ultimately the Thatcher Company paid with its own money the notes, by which the remainder of the purchase price had been raised (the Thatcher Company's). (R. 328–330.)

The facts in this record are inconsistent with any conclusion other than that the Sterling Glass Company purchased the stock of the Essex, Travis, Lockport, and Woodbury companies and owned it until it passed directly to the Thatcher Company, together with the right to pay the notes and take up the collateral by the assignment of the Sterling Company to the Thatcher Company on June 7, 1920, of the contract of August 29, 1919. The facts and circumstances proving this may be summarized as follows:

The Sterling Company purchased from Axton the options on the stock of the four corporations, paying to Axton $100,000 for these options and for services rendered by Axton in connection with this transaction. (R. 40.) Axton's agreement was made with the Sterling Company (R. 179), and the payment of the money was guaranteed by the Thatcher Company (R. 40), not by Baldwin, Libbey, and Ford. It was by the exercise of these options, owned and paid for by the Sterling Company,

that the stock of the four corporations was purchased on August 28–29, 1919.

The proceeds of the notes of Baldwin, Libbey, and Ford were deposited in the Guaranty Trust Company to the credit of the Sterling Company (R. pp. 38–39, 149), together with $50,000 realized from the sale of stock of the Sterling Company. (R. 39.)

The Guaranty Trust Company's commission of $24,000 on the transaction was a debt of the Sterling Company (R. 39), and apparently other expenses of the transaction were an obligation of the Sterling Company (R. 164).

By the contract of August 29, 1919 (R. 36), the Sterling Company assumed all liability on the notes of Baldwin, Libbey, and Ford, and took the absolute right to take over the collateral on payment of the notes (R. 37, 58, 227). This contract provided also that upon payment of $250,000 to Libbey and release of the liability of himself and Ford on the notes, these parties would release to Baldwin not any interest in the stocks of the four companies, but all interest in the stock of the Sterling Company. While we contend that the company purchased and owned the stock which was deposited as collateral, nevertheless this contract determined its right as against the three individuals named to pay the notes and take up the collateral. This contract was not, as we will show later (post, p. 40), alternative in its nature, as contended for by counsel for petitioner.

All legal rights of the Sterling Company under this contract passed to the Thatcher Company direct by the bill of sale and assignment executed by the Sterling Company on June 7, 1920 (R. 58), and the subsequent action of the Thatcher Company in paying the notes and taking up the collateral was under the rights acquired under this contract and by the purchase of the stock of Sterling Company. The Thatcher Company had, on the third day of June, 1920, just four days prior thereto, authorized the purchase of Libbey's stock in the Sterling Company (R. 59), which purchase was consummated on the following day (R. 159), thus securing for the Thatcher Company all of the stock of the Sterling Company. On the 3rd of June the Thatcher Company notified the Sterling Company that it desired all of its property and assets, including the rights under this contract of August 29, 1919, transferred to the Thatcher Company. (R. 54.) Notices to the three companies, Essex, Travis, and Lockport, of the acquisition of all of their stock by Baldwin and his associates, and that the Thatcher Company desired to have all of their properties and assets transferred to it, were sent out on June 7th. (R. 63, 67, 72.) Thus, by securing *all* of the stock of the Sterling Company and the transfer of the company's property and rights under the contract of August 29, 1919, the Thatcher Company came into the direct ownership of the collateral.

Unless the Thatcher Company owned the stocks of the Essex, Travis, and Lockport companies, how is it possible to account for the transfer by these companies of all their properties and assets, amounting in value to hundreds of thousands of dollars, to the Thatcher Company for the nominal consideration of $1 some days before the day (July 3, 1920) when the notes were paid by it and the stock taken up?

If Libbey and Ford had any interest in the stock of the four companies, they still have that interest. They have not conveyed or assigned it. If Sterling Glass Company did not acquire the stocks of the four companies on August 28, 1919, and if Baldwin, Libbey, and Ford did acquire the stocks of the four companies on that day, the dissolution of the Essex, Travis, and Lockport companies was invalid. Libbey and Ford have not conveyed any rights which they acquired on August 28, 1919.

The acts and admissions of Baldwin and of the Thatcher Company up to June 7, 1920, are inconsistent with the ownership of these stocks by anyone other than the Sterling Company, and show that the latter company was controlled in fact by the Thatcher Company and its president, Baldwin, and its general counsel, Mandeville.

Immediately upon the purchase of the stocks of the four companies, the direction of their businesses was taken over by Baldwin and they were, after

January 1, 1920, managed from the offices of the Thatcher Company. (R. 43, 115.)

The Thatcher Company made substantial advances of money to the Travis Company, October 27, 1919, to the Woodbury Company in September, 1919, and to the Sterling Glass Company from August 27 to December 31, 1919. (R. 161.) It also received $75,000 from the Essex Company on December 31, 1919, which sum appears to have been treated as funds of the Thatcher Company. (R. 161, 162.) The money advanced to the Sterling, Travis, and Woodbury companies by the Thatcher Company was not evidenced by any note or other evidence of indebtedness, nor was the money received by the Thatcher Company from the Essex Company so secured.

Baldwin's annual report to the directors and stockholders of the Thatcher Company for 1919 stated:

> Upon the 29th day of August (1919) *we* purchased the capital stock of the companies named (Essex, Travis, Lockport, and Woodbury) and the Hartford-Fairmont feeder and machine and milk-bottle business of the J. T. & A. Hamilton Company. (R. 43.)

Baldwin in his testimony states that in using the word "we" he referred to the Sterling Company. (R. 112.)

The accounting methods of the four companies were to be put on the same basis as those of the Thatcher Company as soon as possible after the

purchase of the stocks by the Sterling Company. (R. 39.)

The Hamilton Company's license to use one of the Hartford-Fairmont patented feeders, this feeding machine, and the milk-bottle business of the Hamilton Company passed to the Thatcher Company by the transaction of August 28, 1919 (R. 148-149), by which the stock of the four companies also passed. As a part of this sale, the Hamilton Company's stockholders contracted to stay out of the milk-bottle business, except in Allegheny County, Pennsylvania, for a period of 10 years from January 1, 1920. This covenant, it will be seen, was with the Thatcher Company.

Neither Baldwin, Libbey, nor Ford asserted any claim to the Hamilton rights and properties, yet these properties were acquired with a part of the funds which the Thatcher Company now asserts enabled Baldwin, Libbey, and Ford to acquire individually the stocks of the Essex, Travis, Lockport, and Woodbury companies.

The agreement between Baldwin and the Bond Company which purchased the bonds issued by the Thatcher Company to take up the notes of Baldwin, Libbey, and Ford and the stock deposited as collateral, recited that the stock of the Essex, Lockport, Travis, and Woodbury companies was owned by the Sterling Company. (R. 47.) This agreement also refers to the Essex, Travis, Lockport, and Woodbury companies as "subsidiaries" of the Thatcher Company.

The statement of Baldwin that the Sterling Company owned the stocks of the four companies, the acquisition by the Thatcher Company of the stock in the Sterling Company owned by Libbey, thus putting the ownership of the entire stock of the Sterling Company in the Thatcher Company, and the taking of the logical and proper steps to transfer the property and assets of the Sterling Company, including its rights under the contract of August 28, 1919, to the Thatcher Company before making any effort to transfer the properties of the four companies from that company to the Thatcher Company—all this shows conclusively that Baldwin, Mandeville, and their associates treated the stock of these four companies as the property of the Sterling Company.

We think it is apparent from these facts that the Thatcher Company on August 28, 1919, indirectly acquired the stock of the four companies through its ownership of 50% of the stock of the Sterling Company. The Thatcher Company became the practical owner of *all* the stock of the Sterling Company on December 11, 1919, when formal notice was served upon it by Libbey and Ford that they would retire from the transaction. (R. 40–41.) Under the terms of the contract of August 29, 1919, upon receipt of such notice, the agreement to purchase Libbey's stock in the Sterling Company became operative. So that at least as early as December 11, 1919, the right to take over Libbey's stock in the Sterling Company accrued. As a matter of fact,

while the formal notice by Libbey and Ford of retirement from the transaction was given on December 11, 1919, the Thatcher Company became the owner of this stock at a date earlier than this. Prior to that date Baldwin and the Thatcher Company must have known that Libbey was out of the transaction. The certificates of stock acquired on August 28, 1919, were held by the Guaranty Trust Company as security for the notes of Baldwin, Libbey, and Ford, yet prior to the date of the notices from Libbey and Ford, and seven months before Thatcher Company paid Libbey for his stock, the certificates held by the Guaranty Trust Company were sent to Elmira, N. Y., the home office of the Thatcher Company, and certificates in lieu thereof were issued December 5–8, 1919, to officers and employees of the Thatcher Company. No certificates were issued to Libbey and Ford. The Thatcher Company assumed directly, on June 7, 1920, the ownership of the stock of all four companies when it took over by bill of sale and assignment all assets and properties of all kinds and description of the Sterling Glass Company.

1. THE PURCHASE OF THE STOCK OF THE FOUR COMPANIES WAS NOT A PERSONAL VENTURE OF BALDWIN, LIBBEY, AND FORD

The relations shown above to have existed between the Thatcher Company and these companies convince that the Thatcher Company was from the

beginning of this transaction the prime mover in it, and that it was not a personal venture of Baldwin, Libbey, and Ford. If it was a personal venture of these men, how is the expenditure of $250,000 of the Thatcher Company's money for stock in the Sterling Company, which money was never returned to the Thatcher Company save as it became the owner of the property of the four companies, to be explained? Surely not by saying that Baldwin, as president of the Thatcher Company, was using his position to finance his own private venture with money of the Thatcher Company. No one would accuse Baldwin of this.

If this was Baldwin's private venture, why do we find the Thatcher Company guaranteeing payment to Axton of $100,000 for the options on the stock of the four companies and his services rendered in connection with the purchase of the stocks?

Were the advances of money by the Thatcher Company to the Travis and Woodbury companies made as a part of Baldwin's venture, or were they made because of the fact that Thatcher Company was, through the ownership of one-half the stock of the Sterling Company, vitally interested in these two companies? So, too, with respect to the payment of $75,000 by the Essex Company to the Thatcher Company, which an employee of the latter testified "became a part of the Thatcher funds" (R. 162), and which does not appear to have been treated as a loan.

If this was a personal venture of these three men, why did the covenant of the Hamilton Company not to engage in the milk-bottle business run in favor of the Thatcher Company instead of Baldwin or some one of the three individuals whose venture it is said to have been?

If this was a personal venture, why did the Sterling Company assume all of the liabilities of Ford, Libbey, and Baldwin in the last clause of the preamble of the contract of August 28, 1919?

Of course, it is somewhat difficult in view of Baldwin's position in the Thatcher Company to tell when he is acting for himself and when as president of the Thatcher Company. Baldwin owned more than 50% of the common stock of the Thatcher Company and a large block of the preferred stock, which had equal voting privileges with the common stock. While, therefore, Baldwin did not own 50% of the entire voting stock, he was the largest individual stockholder and had been its president for years and was very influential in its management and affairs. But the facts here recited disclose that he must have been from the first acting on behalf of the Thatcher Company in this transaction and continued so to act until that Company owned not only the stock but the properties of the three corporations.

Libbey and Ford did not purchase any of these stocks. What these two men and Baldwin did was to lend their credit to the Sterling Company and

to assist that company, half of whose stock was owned by the Thatcher Company, to purchase the stock of these four companies. The money borrowed on their notes was credited to the Sterling Company's account, and the stock when purchased was deposited as collateral for the notes. Thus, simultaneously with the making of the notes and the loan by Guaranty Trust Company of the proceeds to the Sterling Company, the makers were relieved of all liability thereon, except to the extent that the stocks purchased and deposited as collateral were not worth the amount of the loan. Thus, Baldwin, who was president of the Thatcher Company, loaned his name to the venture on behalf of that company; and Libbey, who was greatly interested in the venture if the Hartford-Fairmont patents could be obtained, also assisted in financing a part of the deal as a result of which his own part of the scheme might be furthered. Baldwin accurately described what was done when he said in his annual report to the stockholders of the Thatcher Company:

> We were assisted in obtaining the same (money) by E. D. Libbey, president of the Owens Bottle Co., and Mr. William Ford, a large stockholder in the Owens Company. (R. 43.)

The money with which payment for the stocks was made was none the less the money of the Sterling Company, although Baldwin's, Libbey's, and Ford's names may have been used to borrow it.

When Libbey and Ford withdrew from the transaction, Baldwin did, under the terms of the contract of August 28, 1919, become liable to them on the notes of himself, Libbey, and Ford to the extent that the stocks deposited as collateral would not satisfy the notes, but this assumption of liability did not take with it the ownership of the stocks nor release Libbey and Ford from liability to the Guaranty Trust Company on the notes. No such provision with respect to Baldwin's rights is found in the contract of August 28th. On the other hand, under that instrument, to which Baldwin was a party, the Sterling Company assumed all liability on the notes, with the right to take up the collateral, Baldwin merely agreeing that if Libbey and Ford withdrew they should have in addition to the Sterling Company's guarantee his own personal liability on the notes.

At page 36 counsel for the Thatcher Company urges that the personal nature of the venture is conclusively demonstrated by the mere statement that three men, only one of whom was interested in the Thatcher Company, would not have made themselves liable on notes of this large amount solely to benefit the corporation. This argument overlooks the fact that Libbey was interested in the Sterling Company and in the whole transaction, since it was purposed at this time to obtain the Hartford-Fairmont patents. The prospect of

combining the ownership in one corporation of the rights of the only two complete patented machines for bottle making was so attractive that undoubtedly Libbey was quite willing to lend his name to the Sterling Company to carry out the scheme. In this connection it must be remembered that inasmuch as these companies combined had the exclusive right to use these patents to make milk bottles, it was highly desirable if the patents were to be purchased to secure also these outstanding licenses, which, in effect, constituted the perpetual exclusive right to use these patents in making milk bottles.

Of course, the Thatcher Company did not pay twice for the four companies. It paid $1 to the Sterling Company on June 7, 1920, for all property and assets of every kind and description of that company, including its rights under the contract of August 28, 1919. This nominal consideration only was paid for the reasons, first, that the Thatcher Company owned at the time 100% of the stock of the Sterling Company, which owned the stocks of the four companies; and, second, because in consideration of the assumption by the Thatcher Company of the obligation to pay the remainder of the purchase price of the stocks represented by the notes, no additional consideration should have been paid. While it thus acquired the stocks of the four companies they were still hypothecated to secure the purchase price, and in order to secure the stocks free of obligation it was necessary for

the Thatcher Company to pay the notes. This was done with part of the proceeds of the sale of bonds secured by mortgage on the properties of the Thatcher Company and of the three companies, which was delivered simultaneously with the payment of the notes and the taking up of the collateral. The record shows that the Thatcher Company paid to each of the four companies the nominal consideration of $1 for its properties and assets of all kinds, so that the Thatcher Company did not pay anything for these properties. It had previously acquired all of the stock of the companies by the bill of sale and assignment from the Sterling Company. It did, in effect, pay for the stocks of the four companies when it took over, on June 7, 1920, the liabilities of the Sterling Company under the contract of August 28, 1919, and later under this contract paid the notes and took up the collateral. Its payment, therefore, on July 3, 1920 (R. 143), was not for the properties of the four companies but for the remainder of the purchase price of the stocks which had been purchased on August 28, 1919, by the Sterling Company, whose rights and liabilities had been taken over by the Thatcher Company.

2. BY THE CONTRACT OF AUGUST 28, 1919, THATCHER COMPANY HAD UNCONDITIONAL RIGHT TO PAY THE NOTES AND TAKE UP THE STOCK

The contract of August 28, 1919, under which the Sterling Company assumed all liability on the notes of Baldwin, Libbey, and Ford, and which provided that upon the payment of these notes by the Sterling Company the collateral should become the property of the company, did not, as urged by counsel for petitioner, provide alternative propositions under one of which the Sterling Company assumed the liability and could take up the collateral upon payment of the notes; and under the other of which Baldwin was to assume this liability, with the right to take up the notes and have the collateral. Under the terms of this contract the Sterling Company unconditionally assumed the liability on the notes, with the right to pay them and take up the collateral. Both its liabilities and its rights are unqualified under the terms of the contract. Paragraph Three of the contract does not provide an alternative proposition by which Baldwin is to pay the notes and take up collateral, but merely provides that in the event Libbey withdraws from the transaction he shall have the security of Baldwin's promise to assume the liability on the notes in addition to the security of this assumption in the first paragraph of the contract by the Sterling Company. It will be noticed also that Paragraph Four of the contract

provides that upon the payment of the moneys by Baldwin, specified in Paragraph Three, Libbey and Ford release to Baldwin, *not* any interest in the stocks deposited as collateral for the notes, but all interest in the stock of the *Sterling* Company.

It is respectfully submitted, therefore, that both of the conclusions by counsel for the petitioner as stated on p. 29 of his brief are unsound and not supported by the evidence.

II

The acquisition of the stock by Sterling Company had the same legal effect as though the Thatcher Company had directly acquired them

The Act provides that it shall be unlawful for a corporation to acquire, *directly or indirectly*, the stock of one or more corporations where the effect may be to substantially lessen competition between them, or any of the, etc.

The Thatcher Company appears to have thought that it could organize a corporation whose stock it would own and have that corporation purchase the stock of the four competing companies and escape the provisions of the statute. This, it is submitted, it could not do. When the Thatcher Company owned 50% of the stock of the Sterling Company, which latter company had purchased the entire stock of the four competing companies, it was in exactly the same position it would have have been had it purchased directly 50% of the stock of the four companies. When the Thatcher Company

became the owner also of Libbey's stock in the Sterling Company, although Libbey's stock may not have been transferred of record to the Thatcher Company, the Sterling Glass Company became nothing but the Thatcher Company acting under another name. The Thatcher Company can not escape the Clayton Act because of the corporate entity of the Sterling Glass Company.

The Court held on this point that the Thatcher Company could not by the interposition of the Sterling Company bar the operation of the statute. It said:

> The interposition of the Sterling Company, created by the respondent to spend its money in the purchase, was not the act of a legal entity which can blind the court to the real transaction or bar the operation of the statute. "Courts of equity will look behind a corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice." *United States* v. *United Shoe Machinery Company*, 234 Fed. 127; 258 U. S. 451; *Brown* v. *Pennsylvania Railroad Company*, 235 Fed. 669; 250 Fed. 513. "If any general rule can be laid down in the present state of authority it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the con-

> trary appears: but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." *United States* v. *Milwaukee Refrigerator Transit Company,* 142 Fed. 247. (R. 330.)

Two other decisions under the Clayton Act bear upon this point. In *United States* v. *New England Fish Exchange et al.,* 258 Fed. 732, the Court (Bingham, Circuit Judge) held that where the Bay State Fishing Company of Maine organized corporations under the laws of Maine to which was transferred the existing business of the old corporations organized under the laws of Massachusetts, and the stock of the new corporations was transferred to the Bay State Fishing Company of Maine, the transaction was as much a violation of the Clayton Act as though the stock of the Massachusetts corporations had been taken over directly.

So, also, in *Aluminum Company* v. *Federal Trade Commission,* 284 Fed. 401, the Circuit Court of Appeals for the 3rd Circuit held that the Aluminum Company violated Section 7 of the Clayton Act, where it organized a new corporation, two-thirds of whose stock it purchased, the new corporation taking over the assets and business as a going concern of the only important competing mill rolling aluminum sheets of certain widths.

By creating a new corporation to purchase the stock of the four competing corporations, the

Thatcher Company did not put itself in any better position under the law than if it had acquired the stock of the four corporations directly.

III

Thatcher Company directly acquired the stock of the four companies not later than June 4, 1920

Ultimately, as we have shown (supra, p. 15), the Thatcher Company actually acquired directly the stocks of the four companies. This took place on June 7, 1920. The Thatcher Company can not escape the prohibitions of the Act by claiming that there was at this time no competition between the corporations, where, as shown, that competition was eliminated by the Thatcher Company itself through its original ownership of 50%, and ultimately 100%, of the stock of the Sterling Company and its immediate control and direction of the affairs of the four corporations through this ownership.

IV

The acquisition by the Thatcher Company of the stock of the four corporations eliminated competition between those companies and between the Thatcher Company and those companies, restrained trade, and tended to create a monopoly

The Commission found and the Court below sustained the finding (R. 331) that the effect of the acquisition by the Thatcher Company of the stock of the Essex, Travis, Lockport, and Woodbury companies was to eliminate all competition between those companies and between them and the

Thatcher Company, to restrain trade in the milk-bottle business in the sections and communities of the United States in which the four companies were engaged in commerce, and tended to create a monopoly in interstate commerce in the milk-bottle business.

The evidence clearly establishes that all competition between the four companies named ceased immediately upon the acquisition by the Sterling Company of the stock of the four companies. The competition among these companies and between these companies and the Thatcher Company was more than "substantial." The business of these five companies and that of J. T. & A. Hamilton Company, which the Thatcher Company also acquired, amounted to at least 70% of the milk-bottle business. These companies controlled among them the exclusive right to use the only efficient machinery for manufacturing glass milk bottles by mechanical processes. They were, therefore, in position to offer the most effective competition to each other and to others engaged in the business. The combination of these companies eliminated the principal and most effective competition in interstate commerce in the milk-bottle business.

The effect of the acquisition by the Thatcher Company of the stock of these four companies was not only to tend to create a monopoly, but it, in fact, created a monopolistic unit in the milk-bottle busi-

ness. The amount of the business controlled by them, together with the tremendous advantage which the control of the most efficient mechanical means of manufacture gave to the corporation, made the Thatcher Company a virtual monopoly. This degree of the control of an industry is held by practically all of the authorities to constitute a monopoly within the meaning of the Sherman Law. (*Swift & Co.* v. *U. S.*, 196 U. S. 375, 394; *U. S.* v. *Reading Co.*, 226 Fed. 229; *U. S.* v. *Patterson*, 222 Fed. 599, 625; *U. S.* v. *Dupont Powder Co.*, 188 Fed. 127, 145.)

V

The statute authorizes the commission to require the divestiture not only of the certificates of stock but of the rights of which those certificates were evidence

We have established, we believe, that the Thatcher Company acquired the share capital of the Essex, Travis, Lockport, and Woodbury companies, and, at least in the case of the three companies first named, in violation of the statute. We are concerned here only with the question of the remedy provided by the statute. Section 11 of the Act directs the Commission to enter an order requiring the corporation to "cease and desist from such violations of law and divest itself of the stock held," etc. As previously pointed out, the "violation of law" consists in (a) the acquisition of stock or share capital, and (b) the substantial lessening, or threatened substantial lessening, of competition between the

corporations, restraint of trade in any section or community, or tendency to create monopoly. The lessening of competition is in its nature a continuing thing, just as the corporate combination in the Standard Oil case was held to be a continuing threat to monopolize and a monopolization. To cease and desist from the violation of law is to cease and desist from holding the stock and from lessening competition or from restraining trade. To this end the statute provides that the Commission shall issue an order directing the corporation to divest itself of the stock held in the manner prescribed by the Commission. This divestiture can result in a removal of the restraint upon competition or upon trade only if the assets and properties, the rights in which were acquired by the Thatcher Company, are sold by that company in obedience to the statute.

1. THE STATUTE EXPRESSLY CONFERS AUTHORITY UPON THE COMMISSION TO REQUIRE THE DIVESTITURE OF THE RIGHTS WHICH THE CERTIFICATES OF STOCK REPRESENTED WHEN PURCHASED

The share capital of a corporation is "a right which its owner has in the management, profits, and ultimate assets of the corporation." (Clark on Corporations, 7th Ed., Vol. I, p. 55.) For a corporation to acquire the share capital of another within the meaning of a statute is to acquire these rights. This, then, is what the corporation must divest itself of under the mandate of the Commis-

sion. The certificates of stock are merely the evidence of these rights. This Court will not assume that Congress did a vain or useless thing. For Congress to have directed the divestiture of pieces of paper with no value behind them would have been useless. The statute should have a reasonable construction. Such a construction requires that it should be held as directing the divestiture of the share capital acquired under such conditions that it shall represent, so far as any voluntary act of the acquiring corporation is concerned, at least the same rights and values which it represented when it was purchased. For this is what was purchased—not mere scraps of paper. If this be the correct interpretation of the statute, then no doctrine of implied powers need be invoked to justify the Commission's order. The provision with respect to physical properties and assets is mere specification of that of which the certificates of stock are evidence and is clearly warranted by the express language of the statute.

2. THE POWER TO MAKE EFFECTIVE THE DIVESTITURE OF SHARE CAPITAL BY PROVIDING THAT THE PROPERTIES AND OTHER ASSETS SHALL BE INCLUDED THEREWITH IS NECESSARY AND IS BY FAIR IMPLICATION CONFERRED

If the nature of the authority which the Thatcher Company claims the Commission has assumed without warrant of the statute be analyzed, it will be seen that the Commission did not by requiring the divestiture of properties and assets assume any

substantive or regulatory power nor any jurisdiction of a subject matter not expressly committed to it by the Act. That part of the statute which authorizes the Commission to require divestiture of stock is concerned only with the remedy for the wrong which the substantive law of the Section denounces.

To carry out the purpose of the statute to restore competition as contemplated by the remedy prescribed by the Act, it is absolutely necessary that the Commission require the Thatcher Company to divest itself of the share capital of the Essex, Travis, and Lockport companies in such manner that such stock shall carry with it that which it represented when acquired.

In this connection the Court below said:

> To carry out the *purpose* of the statute the Commission therefore made an order commanding the respondent to cease and desist from the ownership and control of the assets, etc. * * * We hold that the statute is remedial, not punitive. (Western Meat Company v. Federal Trade Commission, 1 Fed., 2nd, 295; Id. 4 Fed., 2nd, 223.) The sole *purpose* of a valid order of the Commission must be to remedy an unlawful situation. In effecting the remedy, however, the Commission must meet the situation as the offending corporation has made it. If it created the situation so as to defeat the statute, the offending party can not be heard to say that thereby the Commission

> is helpless and the law unenforcible. (R. 332.)

The power specifically to require the divestiture of the properties being absolutely necessary to effectuate the divestiture, the Commission will be held to have such power even if not conferred in express terms.

> When a statute gives a right or imposes a duty, it also confers by implication the power necessary to make the right available or to discharge the duty; * * *.
>
> When the legislature gives power to a public body to do anything of a public character, the legislature means also to give to such body all rights without which the power would become wholly unavailable, although such meaning can not be implied in relation to circumstances arising accidentally only. (Lewis' Sutherland on Statutory Construction, 2nd Ed., Vol II, pp. 947–948.)

So when Section 11 of the Clayton Act provides that the Commission shall require a corporation to divest itself of stock or share capital acquired in violation of the Act "in the manner prescribed by the Commission," it carries with it the authority to require the divestiture to be made in such form and in such manner as to be effective.

Statutes conferring special jurisdiction upon the Federal Courts are to be strictly construed, and, yet, where authority is conferred to remedy specified illegal conditions, it is held to carry with it all

that is necessary to make the remedy effective. The Sherman Law confers upon the Federal Courts the power to "prevent and restrain violations of this Act." It has been contended that this language authorizes only the restraining in the future of the doing of acts which have been proven to be in violation of the law. But this Court held in the Standard Oil and Tobacco cases (221 U. S. 1, 77, 78; 221 U. S. 106, 184) that where a condition had been brought about which constituted a continuing attempt to monopolize and a continuing monopolization contrary to the statute, the Act authorizes the application of such remedies as will correct the unlawful condition.

So here the nature of the remedy provided manifests unmistakably the object of Congress, namely, to restore the competition in interstate commerce which the acquisition of the stock eliminated, or threatens to eliminate. To do this the Commission may order divestiture of the stock in the manner prescribed by it. Manifestly this must be held to confer authority to make that divestiture effectual for the purpose of carrying out the intention of Congress—to restore competitive conditions in harmony with the law.

3. CASES CITED BY COUNSEL FOR THATCHER COMPANY DISTINGUISHED

The cases cited by counsel for Thatcher Company are not in point. In each instance they hold that where regulatory power over a subject matter

is not clearly conferred it may not be implied; or where a particular procedure is prescribed, a different procedure may not be followed.

In *I. C. C.* v. *C. N. O. & T. P. R. Y.* (167 U. S. 479) this Court held that power to exercise the legislative function of fixing reasonable rates for all railroads in the United States would not be implied but must be unmistakably granted. Manifestly, a power of such scope must be expressly conferred. It is quite another thing to imply the power to make effective a remedy which is specifically prescribed.

In *United States* v. *P. R. R. Co.*, 242 U. S. 208, the Interstate Commerce Commission sought to establish by the interpretation of general words in the statute authority to require the railroads of the country to furnish tank cars. This Court pointed out that if the interpretation given to the statute by the Commission were correct, the law authorized the Commission affirmatively to require all railroads of the country to furnish special equipment of any and all classes, and held that jurisdiction of such a sweeping character would not be found except in express language; and that what the statute in fact authorized the Commission to do was to regulate practices of the companies which did in fact supply such equipment. The attempt to imply such far-reaching, affirmative, regulatory power is quite different, as already contended, from implying the power to make effective a remedy specifically granted.

The case of *Wilder Manufacturing Co.* v. *Corn Products Co.* (236 U. S. 165) is not in point. There the Court held that the power expressly conferred upon the Attorney General to dissolve a combination as violative of the Antitrust Act was inconsistent with the right of an individual to assert as a defense to a contract on which he was otherwise legally liable, that the other party had no legal existence in contemplation of the statute. An analogous question under Section 7 of the Clayton Act would be whether a private individual who is sued in contract by a corporation which holds the stock of other corporations in violation of Section 7 can set this fact up in defense of the action; or whether a private individual may proceed by injunction to prevent violations of Section 7 where the statute prescribes that such proceedings shall be by the Trade Commission or by the Attorney General suing in the districts courts. Such questions have no relation to whether the authority to compel divestiture of stock carries with it the power to make such divestiture effective.

VI

Section 7 was not intended to prevent only secret acquisitions of stock of competing corporations

Congress did not intend by Section 7 to prevent only secret acquisitions of stock of competing corporations. It is probably true that because acquisitions of stock of competing corporations afforded a very easy means of secretly controlling compe-

tition, Congress saw fit to prohibit the purchase of stock where its effect might be to substantially lessen competition, etc. While this was one of the moving causes, the language of the statute can not be tortured into a prohibition only of secret acquisitions or holdings of stock in competing corporations. If secret ownership of the stock were all that the statute is directed against, the remedy of divestiture would never have been provided. The procedure prescribed for proceedings by the Commission under Section 11 would necessarily result in a full publication of the facts and the ownership of the stock would no longer be secret.

According to the contention of the Thatcher Company, no divestiture of the stock need follow such disclosure since the object of the statute would have been accomplished. The express provision for divestiture after full publicity is given the whole matter through the Commission's hearings is conclusive proof that mere secret holding was not what the statute sought to reach. The suggestion of counsel for the Thatcher Company that if a corporation when proceeded against by the Commission for illegal acquisition of stock in competing corporations would promptly take over the properties and assets of all description, including the good will of the companies, the object of the statute will have been attained, finds no support either on the face of the statute or in its legislative history. The illegality of the acquisition is dependent solely upon its effect to lessen competition between the

companies or to restrain trade in any section or community or to tend to a monopoly and not upon its secret character.

Nor is there foundation, it is submitted, for the conclusion that it was *only* because of the fact that the stock was secretly acquired that the statute was passed. Congress must have recognized that it was far easier to acquire 51% of the stock of a corporation than to acquire the physical properties and assets with the accompanying appraisals of tangible properties, good will, and the like, the necessity for procuring of the consent of stockholders to the sale, etc. Moreover, the power of a given amount of capital to control competition is practically doubled if it may be used to purchase slightly over one-half of the stock of such companies. For these and other reasons, Congress saw fit to abolish this method of controlling competition.

Nor is it sound to urge that merely because a merger of physical properties of several corporations would in a given case be legal under the Sherman Law a purchase by one of them of the share capital of the others, if followed by a merger of the physical properties, ought not to be restrained. The Clayton Act, as this Court has held, established a new and different test of legality than that provided by the Sherman Law and sought to halt restraints of trade in their incipiency. (*United Shoe Machine Company* v. *United States*, 258 U. S. 51; *Standard Fashion Company* v. *Ma-*

grane-Houston Company, 258 U. S. 346.) From the viewpoint of the Clayton Act only if the acquisition by one corporation of the share capital of others would not lessen competition or restrain trade within the meaning of that Act can the merger of the physical properties through purchase of stock be justified.

VII

The Thatcher Company can not take advantage of its own wrong by voting itself, for a nominal consideration, the assets and properties of the corporations whose stock it has illegally acquired

The statute prohibits the purchase of stock under the circumstances and with the effects described. If stock is acquired in violation of the Act, and the remedy is divestiture of the stock, then its continued holding is unlawful. If, while illegally holding stock illegally acquired, the Thatcher Company seeks permanently to secure to itself the fruits of its violation of law by using the stock, by voting or otherwise, to acquire the physical properties, business, and good will of the companies, the entire transaction is unlawful and may be undone. The Thatcher Company can not take advantage of its own wrongful act and its illegal possession of the stock to acquire the physical properties. The maxim that no one may take advantage of his own wrong is one of general jurisprudence applied in various relations. The principle has been well stated by the Supreme Court of North Carolina in

the case of *Little* v. *Fleischman et al.* (98 S. E. 455, 458), as follows:

> That no man should be permitted to take advantage of his own wrong is not only a principle of the common law but a maxim of general jurisprudence which is well recognized and established. It is based on elementary principles and is applied both in courts of law and of equity, the reasonableness and necessity of the rule being manifest. It is of such general application that it admits of illustration from every branch of legal procedure, and is one of the basic principles which govern this case. (Broom Legal Maxims (6 Am. Ed.), p. 212, Star, p. 275, and cases.) It applies even though the actual wrong was unconsciously committed, which we have no doubt was the case here.

This fundamental rule of conduct should be construed with all the more strictness against the party whose claimed right arises out of the violation of the general law enacted to effectuate the public policy of a state or nation. Section 7 of the Clayton Act is a declaration by Congress of public policy. If this Court finds that the acquisition by the Thatcher Company of the stock of the Essex, Travis, and Lockport companies was unlawful, it will not permit it to evade the provisions of the statute by so simple a device as the purchase of physical properties and business through the voting power of the stock held. (*Levy* v. *Kansas City,* 168 Fed. 524, C. C. A., Eighth Circuit, and cases

therein cited.) The Court below followed the opinion of the Supreme Court of North Carolina, supra.

VIII

The Circuit Court of Appeals has jurisdiction to enter a decree affirming the order of the commission requiring the Thatcher Company to divest itself of the share capital, assets, and properties

Section 11 of the Clayton Act provides that upon application of the Commission to the proper circuit court of appeals to enforce its order, and upon filing of the transcript of the proceedings, that court—

> shall have *jurisdiction* of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a *decree* affirming, modifying, or setting aside the order of the Commission or board.

The jurisdiction conferred upon the circuit courts of appeals is original jurisdiction. (*Silver* v. *Federal Trade Commission*, 292 Fed. 752; *Butterick Co.* v. *Federal Trade Commission*, 4 F. 2nd 910.)

The circuit court of appeals in this case had jurisdiction of the proceeding and of the question determined therein. "Jurisdiction is the right to put the wheels of justice in motion, and to proceed to the final determination of a cause upon the pleadings and evidence." (*Venner* v. *Great Northern*

Ry., 209 U. S. 24.) No better definition of jurisdiction can be found than that given by this Court in *Rhode Island* v. *Massachusetts* (12 Peters 657, 718):

> Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them * * * the question is, whether on the case before the Court their action is judicial or extrajudicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the Court has jurisdiction; * * *.

A "decree" is the judgment or sentence of a court of equity. It is the judicial decision of a litigated cause by a court of equity. (I Bouvier, 3d Revision, 802.)

In construing the Clayton Act the legislative intent is to be ascertained from the statute as a whole, and that construction given which makes the whole effective. (*Blair* v. *Chicago*, 201 U. S. 400.) "In this inquiry the intention of the legislature is to be sought for. That, whatever it may be, constitutes the law." (*James* v. *Milwaukee*, 16 Wall. 159.) The Act is a declaration of public policy by the nation. If it may be evaded by the methods disclosed in the record Congress has enacted a vain thing.

The Clayton Act is a remedial statute (*Western Meat Co.* v. *Federal Trade Commission,* I Fed. 2d 295; Id. 4 Fed. 2d 223; Opinion of Court below, R. 332) and should be liberally construed, so that it may be effectual against the evils it was designed to remedy. This principle is as applicable to provisions for remedies as to provisions of substantive law.

That the circuit courts of appeals when sitting as courts of original jurisdiction in these cases have the power contended for by the Commission is borne out by other provisions of the Clayton Act. Section 15 of that Act confers jurisdiction upon the district courts of the United States to prevent and restrain violations of the Act, including, of course, Section 7 thereof. The language of Section 15 is identical with Sections 4 and 5 of the Sherman Anti-Trust Act. The scope and character of the jurisdiction of the Federal Courts under these sections of the Sherman Law has been adverted to (supra, p. 51). The district courts have the identical jurisdiction under the Clayton Act, since it is conferred by the same words. In a case in the District Court, instituted by the Attorney General, it can not be doubted that the Court would have power to enter a decree compelling the divestiture of corporate stocks acquired in violation of Section 7, together with the assets and properties of the corporations. It is not reasonable to contend that Congress intended to clothe the various circuit

courts of appeals, when sitting as courts of original jurisdiction in Trade Commission proceedings under the Clayton Act, with a narrower and more restricted jurisdiction in respect of the efficacy of the remedies which they can afford than is conferred by the same Act upon the district courts under the authority of Section 15.

The judgment of the Court below should be affirmed.

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APPENDIX

[PUBLIC—No. 212—63D CONGRESS]

[H. R. 15657]

AN ACT TO SUPPLEMENT EXISTING LAWS AGAINST UNLAWFUL RESTRAINTS AND MONOPOLIES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any

insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

* * * * *

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or

any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from

extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

* * * * *

SEC. 11. That authority to enforce compliance with sections two, three, seven, and eight of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations, and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days

after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to

the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modifi-

cation or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

* * * * *

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may

at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

* * * * *

Approved, October 15, 1914.

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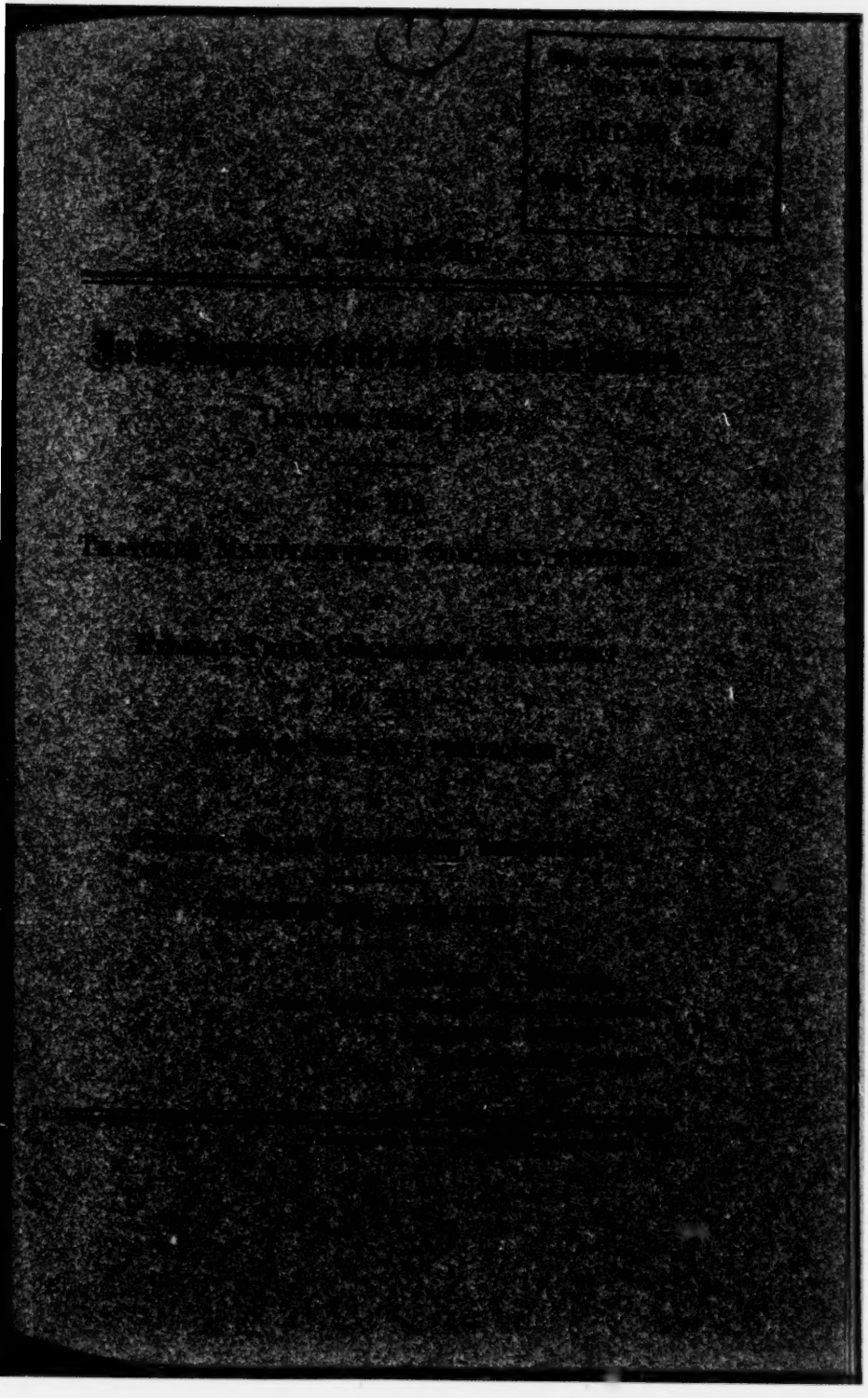

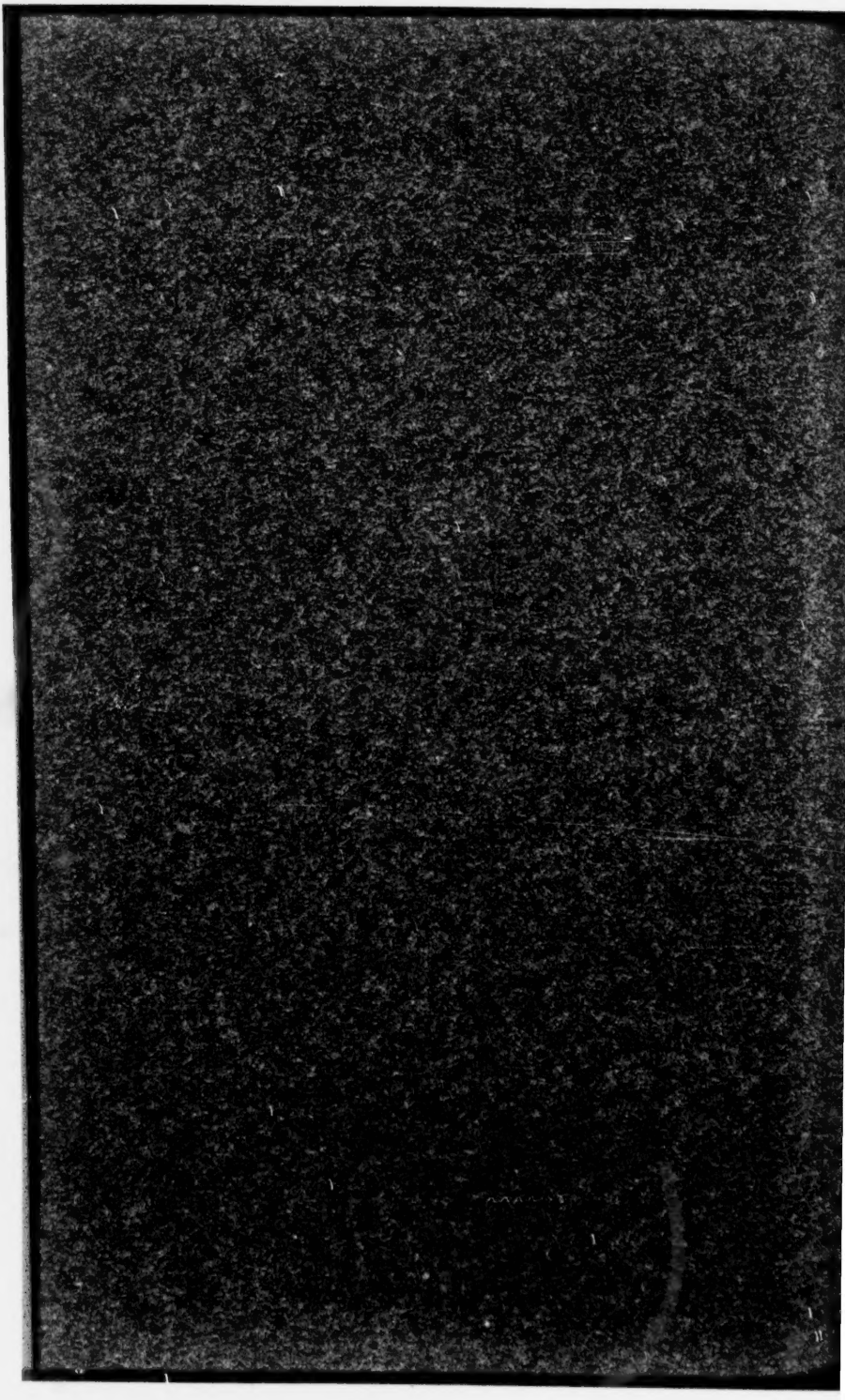

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 213

THATCHER MANUFACTURING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 231

SWIFT & COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

PETITION FOR REHEARING

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Federal Trade Commission is constrained to petition this Honorable Court for a rehearing in the above-entitled causes, the decision of the Court having been rendered therein on the 23rd day of November, 1926, on the grounds and for the reasons hereinafter stated.

1. The distinction drawn by the Court between a case where stock is unlawfully acquired and the

assets transferred prior to the issuance of a complaint, and a case where the assets are transferred subsequent to the issuance of a complaint, is unsound because (*a*) the test of the violation of the statute is the unlawful stock acquisition and the law has been violated as much in the one case as in the other, and (*b*) the ownership of the assets is in both cases the "fruits" of the unlawful acquisition, there being no distinction in law unless it is the purpose of the Court to hold that the Commission in the latter case has the equitable power to order a continuance of the *status quo pendente lite*—a power which the courts have held the Commission does not possess. (*National Harness Manufacturers Association* v. *Federal Trade Commission*, 268 Fed. 705, 707; *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission*, 280 Fed. 45, 48; *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 312; *Eastman Kodak Company* v. *Federal Trade Commission*, 7 Fed. (2d) 994, 996; *American Tobacco Co.* v. *Federal Trade Commission*, 9 Fed. (2d) 570,586.)

The result of the decision is that a corporation may acquire the stock in competing corporations, use it to restrain competition until its purchase is discovered, and then, if it can record the transfers of the properties before the Commission can file a complaint, defeat any remedy at the hands of the Commission, though the corporation has deliberately profited by its violation of the law. While the disastrous consequences which will follow a

particular construction of a statute will not prevent the adoption of that construction where no other reasonable construction can be made, nevertheless the statement of these consequences may serve to make vivid the points involved, and, where the statute is open to several constructions, that construction will be adopted which furthers the legislative purpose. Certainly it was not the legislative purpose that Section 11 of the Clayton Act should be so construed as to render it possible for corporations to profit by their admitted violations of Section 7.

2. The opinion and judgment of the Court in these cases is contrary to the reasoning of the opinion in No. 96, *Federal Trade Commission* v. *Western Meat Company*, where the Court held that—

> The Commission may not go beyond the words of the statute properly construed, but they must be read in the light of its general purpose and applied with a view to effectuate such purpose. Preservation of established competition was the great end which the legislature sought to secure.
>
> * * * * *
>
> Further violations of the act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed.

It is respectfully submitted that this reasoning, applied to the Thatcher and Swift cases, requires

an affirmance of the Commission's orders. The "competition which has been wrongfully suppressed" can be again rendered possible only by requiring a divestiture of the stock of the acquired corporations, together with the properties. The offending companies still own the entire properties and the acquired stocks so far as the record discloses, though in the case of the Thatcher Company the corporations have been dissolved.

The entire situation is in their hands to correct—to undo that which they did. The interests of third parties have not intervened so far as these stocks or properties are concerned. The transfers were merely paper transactions with themselves and can be undone at will.

3. The Court failed to consider and to give effect to the provisions of the statute respecting the power of the Circuit Court of Appeals in these cases.

The statute provides that the Circuit Court of Appeals "shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter, upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission."

Assuming for the moment that the words "affirming, modifying, or setting aside the order of the Commission" do not limit the previous words, the language first above-mentioned would appear

broad enough to confer upon the Circuit Court of Appeals the usual powers of a Court of Equity.

The questions of law involved in these cases are presented to the Circuit Court of Appeals for the first time to any court when a petition is made by the Commission to enforce its order, or when the respondent asks for a review of the order of the Commission, and as a consequence the jurisdiction of the Circuit Court of Appeals is no more appellate than is the jurisdiction of the District Courts of the United States to vacate orders of the Interstate Commerce Commission. Hence, it would seem that the decrees in the Circuit Courts of Appeals should be upon the lines adopted by Courts of Equity generally in hearing suits for injunction. (*L. B. Silver Co.* v. *Federal Trade Commission*, 292 Fed. 752, 753; Court of Appeals, 6th Judicial Circuit; *Butterick Company* v. *Federal Trade Commission*, 4 Fed. 2nd 910, 913.)

> The jurisdiction of the court in this proceeding is original rather than appellate, and, since it is the former, we may, in our own decree, protect the rights of the parties and in such form as it would be enforceable by us. * * * The decree should be along the lines adopted by the courts of equity in hearing suits of injunction.

This same question arose in the case of *Northern Securities Co.* v. *United States* (193 U. S. 197).

Mr. Justice Harlan, speaking for the Court on this subject, said (p. 357):

> It is here suggested that the alleged combination had accomplished its object before the commencement of this suit, in that the Securities Company had then organized, and had actually received a majority of the stock of the two constituent companies; *therefore*, it is argued, no effective relief can now be granted to the government. This same view was pressed upon the circuit court, and was rejected. It was completely answered by that court when it said: "Concerning the second contention, we observe that it would be a novel, not to say absurd, interpretation of the Anti-Trust Act to hold that after an unlawful combination is formed and has acquired the power which it had no right to acquire, namely, to restrain commerce by suppressing competition, and is proceeding to use it and execute the purpose for which the combination was formed, it must be left in possession of the power that it has acquired, with full freedom to exercise it. Obviously, the act, when fairly interpreted, will bear no such construction."

With respect to the relief to be granted by the Circuit Court of Appeals in order to enforce the Commission's orders, we think that the views expressed by Mr. Justice Harlan in concluding his opinion in the Northern Securities case are applicable. The Learned Justice said (pp. 360):

> Guided by these long-established rules of construction, it is manifest that if the anti-trust act is held not to embrace a case such as is now before us, the plain intention of the legislative branch of the government will be defeated. If Congress has not, by the words used in the Act, described this and like cases, it would, we apprehend, be impossible to find words that would describe them. This, it must be remembered, is a suit in equity, instituted by authority of Congress "to prevent and restrain violations of the act," § 4; and the Court, in virtue of a well-settled rule governing proceedings in equity, *may mould its decree so as to accomplish practical results—such results as law and justice demand.* (Italics ours.)

In *Camp* v. *Boyd* (229 U. S. 530) this Court held that a court of equity ought to do justice completely and not by halves. Mr. Justice Pitney, speaking for the Court in this case (p. 552) said:

> One of the duties of such a court is to prevent a multiplicity of suits, and to this end a court of equity, if obliged to take cognizance of a cause for any purpose, will ordinarily retain it for all purposes, even though this requires it to determine purely legal rights that otherwise would not be within the range of its authority.

To the same effect see *Shaffer* v. *Carter* (252 U. S. 37) and *McGowan* v. *Parish* (237 U. S. 285).

Unless, therefore, the words "affirm, modify, or set aside" limit and confine the powers conferred

upon the Court, it would have had under general equity powers jurisdiction to enter any decree necessary to enforce the statute.

The words, when applied to a reviewing court, confer authority to enter any decree which the record before the court warrants and the law justifies.

> The power to modify is generally, by virtue of statutory authority or requirement, the power to render such judgment as the lower court should have rendered, where the appellate court is in possession of all the facts and evidence or otherwise occupies the same position as the trial court. * * * On appeals in equity cases, the higher court has somewhat broader powers of review than on appeals in actions at law tried before a jury, and further it generally has the benefit of findings of fact made by the trial court. Accordingly, on such an appeal, where the court can see from the record what the rights of the parties are, it not only has power to render such a decree as ought to have been rendered below, without remanding the case, but it is also held to be its duty to do so; and in some jurisdictions it is the invariable practice to render final judgment, and not remand the case for further proceedings, but in other jurisdictions such practice apparently does not obtain. Likewise, on appeals from probate courts, the appellate court may render such order or decree as the probate court might and should have done; and in a case tried by the court alone, without a jury, the appellate court may render such judg-

> ment as the lower court should have entered, where the record is sufficient for that purpose, as where there is an agreed statement of facts, where the facts are not disputed, or where the facts have been fully and sufficiently found by the trial court. (4 Corpus Juris, 1150–1151.)

Where the alternative power is conferred upon an appellate court to modify or remand to the court below for modification in accordance with the opinion of the superior court, the latter may pursue either course. If the court remands with instructions to modify in accordance with its opinion, the decree would continue to be that of the court below. (*Silver* v. *Federal Trade Commission*, 292 Fed. 752.)

But where, as under the Trade Commission Act, the jurisdiction of the court is original (*Silver* v. *Federal Trade Commission*, 292 Fed. 752; *Butterick* v. *Federal Trade Commission*, 4 F. 2nd, 910), the court must enter its own decree fixing the rights of the parties and in such form that it will be enforceable by it. (*Silver* v. *Federal Trade Commission*, 292 Fed. 752.)

That the powers of the Circuit Courts of Appeals in these cases are not confined to a reframing of the order is shown by the decision of this Court, holding that although the statute provides that the Commission's findings of fact shall be conclusive, the Circuit Courts of Appeals may nevertheless make findings of fact in addition to those made by

the Commission and need not remand the case to the Commission to make such additional findings. The Court said:

> Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act. (*Federal Trade Commission* v. *Curtis Publishing Company*, 260 U. S. 568, 580.)

In the Northern Securities case, as well as in the Standard Oil and Tobacco cases, this Court, in construing Section 4 of the Sherman Act, held that where a situation arose which constituted a viola-

tion of the statute "and power was conferred to prevent and restrain violations of the Act," the Court had full power and jurisdiction to apply such remedies and grant such relief as would correct and prevent the unlawful situation. We think this principle should be applied to these cases.

It will be observed that Section 11 of the Clayton Act clearly specifies when the jurisdiction of the Circuit Court of Appeals attaches and to what extent that jurisdiction may be exercised, and that the judgment and decree of the Court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in Section 240 of the Judicial Code, and that the Court shall have power to make and enter upon the pleadings, testimony, and proceedings a decree affirming, modifying, or setting aside the order of the Commission. It is difficult to see how broader powers could be conferred upon the Court than is given in this Act to meet the situation in the Swift and Thatcher cases.

We think that the foregoing authorities are decisive of the question involved herein.

Wherefore the Federal Trade Commission respectfully prays that a rehearing be granted in these cases and for all appropriate relief.

BAYARD T. HAINER,
Chief Counsel, Federal Trade Commission.

ADRIEN F. BUSICK,
Assistant Chief Counsel.

We hereby certify that this petition is made in good faith and not for delay, and in our opinion is well founded.

BAYARD T. HAINER,
Chief Counsel, Federal Trade Commission.
ADRIEN F. BUSICK,
Assistant Chief Counsel.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 7[redacted]231

SWIFT & COMPANY,
Petitioner,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT.

For Record see also 546

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

SWIFT & COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT.

Swift & Company respectfully prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Seventh Circuit, which judgment denied (Rec., 1603, 1611, 1613) the petition of Swift & Company, that said Circuit Court of Appeals set aside an order of the Federal Trade Commission entered on August 3, 1922, whereby Swift & Company was ordered to:

> "(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie

Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by anyone for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and Desist from further engagements in unfair methods of competition in violation of an Act of Congress approved September 26, 1914, entitled, 'An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes,' and in so ceasing and desisting, shall Cease and Desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also Cease and Desist from further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and/or control of the capital stock of either said Moultrie Packing

Company or said Andalusia Packing Company and/or through the control and/or ownership of the properties, physical assets and businesses of either of said named corporations.

It is Further Ordered, that the said respondent, Swift & Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth." (Rec., 90, 91.)

The complaint of the Federal Trade Commission was issued on November 24, 1919 (Rec., 13), long prior to which date (Rec., 8, 10, 51, 108, 1283, 1286, 1303) there had been conveyance, by deed and bill of sale to Swift & Company, of all the physical assets of both the Moultrie and Andalusia Packing Companies. The Commission specifically found that from November 3, 1918, as to the Moultrie Company and from March 30, 1918, as to the Andalusia Company "respondent has operated said plant and business as the plant and business of Swift & Company and does now so operate the same." (Rec., 51.)

The Facts.

The Moultrie plant was built at Moultrie, Georgia, in 1914, and the Andalusia plant at Andalusia, Alabama, in 1916. (Rec., 252, 263.) During the summer of 1917 negotiations between representatives of Swift & Company and stockholders of these two companies resulted in agreement as to price for the entire capital stock of both the Moultrie and Andalusia companies, this method being adopted so that there might be the assurance to the parties who were negotiating the transactions that there would not be a single dissatisfied or disgruntled stockholder. (Rec., 256.) As above stated, deeds and bills of sale from these two companies conveyed to Swift & Company, more than a year before the filing of the com-

plaint, the respective physical assets of these two companies; and upon the Moultrie plant (valued at about $150,000 just prior to the acquisition) Swift & Company made expenditures for enlargements and betterments of about $964,000 between the date of acquisition and October 30, 1920 (Commissioner's Ex. 57, Rec., 1324, and Respondent's Ex. 13, Rec., 1557-8), while upon the Andalusia plant (valued at about $143,000 just prior to the acquisition) Swift & Company made expenditures for enlargements and betterments of about $280,000 between the time of acquisition and July 2, 1921. (Respondent's Ex. 27, Rec., 1571.)

Questions presented and reasons relied on for allowance of the writ.

1. Construction of Sections 7 and 11 of the Clayton Act is presented for the first time for determination by this court in the case of *Federal Trade Commission* v. *Western Meat Company*, wherein writ of certiorari to review decision of the United States Circuit Court of Appeals for the Ninth Circuit (4 F. (2d) 223) was granted on June 1, 1925. This case appears on the docket of this court as No. 410 for the October Term, 1925; and among the reasons set forth in the petition for certiorari in said *Western Meat Company* case (decided on rehearing February 17, 1925) is that an "exigency arises from an irreconcilable conflict between the judgment of the court below and that of the United States Circuit Court of Appeals for the Seventh Circuit in *Swift & Company* v. *Federal Trade Commission*, decided February 16, 1925."

2. The decision, announced February 17, 1925, on rehearing in the *Western Meat Company* case (4 F (2d) 223), while in irreconcilable conflict with the reasoning

and conclusion announced in the opinion filed herein on February 16, 1925 (Rec., 1603-1611; Rehearing denied October 13, 1925, Rec., 1613) presents the question of the power of the Federal Trade Commission to enjoin *future* acquisition of physical assets by a stockholding corporation, while the record herein presents the question of the power of said Commission to deal with and to set aside *past* conveyances of physical assets.

3. The definition of the power and authority (statutory and constitutional) of the Federal Trade Commission under Sections 7 and 11 of the Clayton Act is an important question of federal law which has not been, but should be, settled by this court; and the authoritative construction by this court of said Sections 7 and 11 should comprehensively include the related but nonidentical questions presented by the record in the *Western Meat Company* case (Docket No. 410 in this court) and by the record herein.

Wherefore, it is respectfully submitted that the writ of certiorari should issue as prayed.

SWIFT & COMPANY, *Petitioner,*

By ALBERT H. and HENRY VEEDER,
JAMES M. SHEEAN,
FRANK L. HORTON,
Counsel for Swift & Company.

BRIEF.

The portion of Section 7 of the Clayton Act (38 Stat., 731; Comp. Stat., Sec. 8835g) alleged to be violated is as follows:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Section 11 of said act (38 Stat. 734; Comp. Stat. Sec. 8835j) is as follows:

> "Authority to enforce compliance with sections 2, 3, 7 and 8 of this act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:
>
> Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the

> provisions of Sections 2, 3, 7 and 8 of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. * * * If, upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order."

The Federal Trade Commission interprets said Section 7 as embodying a broad declaration of public policy and said Section 11 as imposing upon the Commission the general power and broad duty of carrying out such declared public policy.

Swift & Company's interpretation of said Section 7 is that instead of being a broad declaration of public policy said Section 7 narrowly and precisely defines a specific obstruction to interstate commerce which the Commission is authorized to remove from the channel of such commerce by a single and exclusive form of remedial order prescribed by Section 11, namely "divestiture of stock held."

It is in obedience to its conception of its duty to prevent evasion of a general public policy on which the Commission predicates its asserted right to order Swift & Company to cease and desist from "*further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them,* either through direct or indirect ownership

and/or control of the capital stock of either said Moultrie Packing Company, and/or said Andalusia Packing Company, and/or *through the control and/or ownership of the properties, physical assets and business of either of said named corporations.*" (Rec., 91.) (Italics ours.)

Against the construction of said Sections 7 and 11 which is essential to support the order herein, counsel for Swift & Company respectfully submit the following brief outline of their contentions:

1. The language of said sections does not authorize the order herein; and to the offense created by Section 7 and to the remedy prescribed by Section 11 is pertinently applicable the language of Mr. Chief Justice White (limiting remedies under the Sherman Act to those prescribed by that Act) in *Wilder Mfg. Co.* v. *Corn Products Refining Co.* 236 U. S. 165 (174) as follows:

> "Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes."

2. The purpose of the Clayton Act was to arrest, by specific directions to an administrative agency, certain practices theretofore found, in certain circumstances, to have been efficient in obstructing the channel of interstate commerce. Accordingly Congress specified in the Clayton Act most of the practices enumerated by Chief Justice White in the *Standard Oil* case, 221 U. S. 1 (41-43) as means or devices by which the defendant in that case had sought to restrain trade and attain monopoly. In such enumeration the Chief Justice sets forth the holding company (p. 41) and "the operation of bogus independent companies" (p. 43); and our contention is that Section 7 legislated specifically against the "holding company" and the "bogus independent" and Section 11 set up as the single, exclusive writ of execution against this

practice an order that a corporation which restrained interstate commerce through stock ownership "divest itself of the stock held."

3. That it was a definite trade practice, namely "the operation of bogus independent companies" by and through the action taken by "holding companies" in unduly lessening competition and restraining trade which Congress was legislating against in Section 7 of the Clayton Act is shown by reference to page 13 of the report from the Committee on the Judiciary, submitted July 22, 1914 (Senate Report 698, 63rd Congress, Second Session), where this section is discussed under the heading "Holding Companies." In the debates concerning this Section (Congressional Record, August 27, 1914, pp. 14315-6) Senator Cummins said:

> "Wherever the law permits the sale of the business then it ought to be open and public, and a corporation ought not to acquire control of a business simply through the purchase of the stock of a company which continues under its own name, and, so far as the public knows, is independent in its management. That is what I think this section is intended in the main to prevent."

4. The Federal Trade Commission, its members and its counsel heretofore have disclaimed jurisdiction or authority on the part of the Commission to order a respondent to cease and desist from "holding, owning, controlling and/or operating * * * plants and businesses * * * through the control and/or ownership of the properties, physical assets and business." (Rec., 91.)

The Federal Trade Commission, in its conference rulings appearing in its Bulletin No. 1 of January 31, 1916, gives as Conference Ruling No. 8 the following:

> "*The right of one manufacturer engaged in interstate commerce to buy out a competitor, and jurisdiction of the commission in such matters.*—On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business: Held:

> That the only jurisdiction of the commission in respect of such transaction is to enforce the provision of Section 7 of the Clayton Act prohibiting the acquisition by any corporation engaged, in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged, where the tendency of such acquisition may be to substantially lessen competition between such two corporations, or to restrain interstate commerce or to create a monopoly; and also possibly to enforce section 5 of the Federal Trade Commission Act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition. *Held, also,* That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton Act or the Federal Trade Commission Act."

In the memorandum of Commissioner Van Fleet of the Federal Trade Commission, issued in connection with the proposed merger of the Midvale Steel & Ordnance Co., the Republic Iron & Steel Co., and the Inland Steel Co., it is stated:

> "So the Clayton Act specifically limits its operation to a case where the combination is effected by the acquisition of shares or share capital, thus under the well-known maxim of statutory construction '*expressio unius,*' etc., excluding its application to any other state of facts. * * *
>
> * * * There was a well-defined purpose in the Clayton Act, namely, to prevent secret combinations by the acquisition of stock, and a reference to the debates over the bill clearly demonstrates this and clearly shows it did not have in mind the prohibition of the merging of competing companies under all circumstances."

Members of the Federal Trade Commission appeared before the Committee on the Judiciary of the House of Representatives (66th Congress) on September 8 and 9, 1919. On page 21 of Serial 5 of the hearings Mr. Victor Murdock, a member of the Federal Trade Commission, testified as follows:

"Now, in section 7, Clayton Act, Mr. Chairman, Congress provided against a corporation's acquisition of stock in competing companies. I think at the time Congress passed that act it was a wise piece of legislation. But section 7 of the Clayton Act certainly needs strengthening now, because section 7 does not include the word 'property'. * * * But the Government cannot win where there is an acquisition of property instead of an acquisition of stock as the law stands to-day."

Support of the view we urge concerning the correlation between Sections 7 and 11 of the Clayton Act is found in the following language taken from page 13 of the brief of James M. Beck, solicitor general; W. H. Fuller, chief counsel, and Edward L. Smith, attorney for Federal Trade Commission, filed in this court, February 19, 1923, in successful resistance of application for certiorari in the case of *Aluminum Company of America* v. *Federal Trade Commission*, 261 U. S. 616:

"There is nothing in the Clayton Act which permits the Commission, when it finds a violation of Section 7 of the Clayton Act, to make any order other than one requiring the corporation which has illegally acquired stock to divest itself of such stock; and it would seem that a Circuit Court of Appeals has no right under the power of modification given to it by the act, to enter any order excepting one which requires a divestiture of the stock illegally acquired."

5. The question of the right "to hold, own, control and/or operate properties, physical assets and businesses"—whether illegally obstructive of the channel of interstate commerce—is a question which Congress has committed exclusively to courts of equity under Section 4 of the Sherman Act (26 Stat. 209), which is applicable alike to corporations and individuals by the specific language of Section 8, which says (26 Stat. 210):

"The word 'person', or 'persons, wherever used in this act, shall be deemed to include corporations

> and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The question of the legality, under federal law, of ownership (whether corporate or individual) of physical property is to be determined, as we respectfully submit, by "proceedings in equity" to be instituted "under the direction of the Attorney General" and by the entry by a federal court of equity of such "order of prohibition as shall be deemed just in the premises." (See Sec. 4, Sherman Act—26 Stat. 209.)

6. Sections 7 and 11 (although applicable only to corporations) are not arbitrarily and therefore unconstitutionally discriminatory if they be interpreted as dealing *in rem* with the specific evil of *intercorporate stockholding* and as providing the specific remedy of divestiture of stock. This for the reason that "Holding Companies" had been found (*Standard Oil* case, 221 U. S. 1, at pages 41-43) to be one of the means or devices resorted to in efforts to attain monopoly or restrain trade, and it was within the power of Congress to prescribe a form of regulatory order against this *purely intercorporate* practice. However, said sections would be wholly arbitrary and therefore unconstitutional if they be interpreted to mean that the owner of plant A (if such owner be an individual) may buy and operate the physical properties and assets of plant B, but that the owner of the same plant A (if such owner be a corporation) may not buy or operate the identical physical properties and assets of the same plant B. In holding unconstitutional a Wisconsin statute, this court said in 262 U. S. 544 (551):

> "Here the statute authorized the imposition, and there was imposed, on the plaintiff, a highly burdensome requirement because of its corporate origin,—

> a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary."

It is respectfully submitted that the legality of ownership of physical property (in so far as the claimed illegality of ownership is because of Federal anti-trust laws) must be determined under the Sherman Act, which is specifically applicable alike to corporations and individuals, and that such question cannot be adjudicated by the Federal Trade Commission (or in the statutory proceedings for judicial review of orders of such Commission) but can be adjudicated only by "proceedings in equity" instituted by the Attorney General of the United States under Section 4 of the Sherman Act (26 Stat. 209), wherein such Federal court of equity may make such "order or prohibition as shall be deemed just in the premises."

7. In the *Commodities Clause Cases* (213 U. S. 366) one of the rules of statutory construction was stated to be (408) "that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."

Congressional authority to enact Sections 7 and 11 is clearly derivable from the commerce clause of the Constitution by interpreting said sections as applying to and covering only situations wherein the facts, judicially determined, show that corporate ownership of stock is so postured as to create a direct and substantial obstruction in the channel of interstate commerce and which obstruction will be removed from such interstate channel by change in the ownership of such stock.

On the other hand construction of said sections essential to support the form of order entered by the Com-

mission herein makes unavoidable the consideration and decision of the grave constitutional question, viz:

> May Congress constitutionally forbid a corporation from openly acquiring and from operating business plants and properties of a corporate competitor under circumstances wherein the transaction would be inoffensive to the law if either seller or buyer, or both, were individuals—the respective positions in the trade, and the instrumentalities used in interstate commerce by the respective corporate and individual vendors and vendees being precisely the same—*i. e.*, does the Commerce Clause confer on Congress the power to forbid to corporations, *merely because they are corporations*, the right to acquire or to operate plants and properties permitted to individuals in identical circumstances?

8. Construction of Section 11 as conferring on the Federal Trade Commission the power of retrospective relief, *i. e.*, the setting aside of deeds and bills of sale, would raise the grave question whether this was not an unconstitutional endowment of an administrative agency of Congress with judicial power.

It is respectfully submitted that the writ should be allowed herein, to the end that in the removal by this Court of the conflict between the decision herein and the decision in the *Western Meat* case, the authoritative construction by this Court of said Sections 7 and 11 be so comprehensive as to make final disposition of all the questions presented by the records in the two cases.

ALBERT H. and HENRY VEEDER,
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Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. [redacted] 231

SWIFT & COMPANY,
Petitioner,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

BRIEF AND ARGUMENT FOR PETITIONER.

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JAMES M. SHEEAN,
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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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2. The complaint affirmatively shows lack of jurisdiction of the subject matter as it avers that for about two years prior to the issue of complaint "respondent has operated said plant and business as the plant and business of Swift & Company and does now so operate the same."

3. The strained construction of Sections 7 and 11 sought by the Commission would render said sections unconstitutional.

4. There is no evidence of intercorporate stockholding in such posture or relationship as to confer jurisdiction under Section 7 or to justify order under Section 11.

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I. Sections 7 and 11 of the Clayton Act do not purport to confer power or jurisdiction upon the Federal Trade Commission over plants, properties or physical assets; and the debates of Congress affirmatively show that Congress

had no intention to confer such power or jurisdiction.

1. The question of the legality of ownership or operation of "plants, properties and physical assets" (in so far as any claimed illegality of ownership or operation is because of Federal Anti-Trust laws) has been committed by Congress to the Courts for determination in "proceedings in equity" instituted by the Attorney General of the United States under Section 4 of the Sherman Act, wherein such Federal Court of Equity may make such "order or prohibition as shall be deemed just in the premises." Congress had no intention to commit to the Federal Trade Commission any jurisdiction or control over "plants, properties and physical assets."

2. The intent of Congress is clearly expressed. Section 7 of the Clayton Act precisely defines certain specific situations arising out of intercorporate stockholding wherein the administrative agency is authorized to issue a single and exclusive form of remedial order which Section 11 defines with like precision, viz., "divestiture of stock held."

3. Even if the language of Sections 7 and 11 were not so clear and unambiguous and even if resort be had to the debates of Congress we find that it was the intention of Congress, through enactment of Sections 7 and 11 of the Clayton Act, to prohibit, under certain conditions, the purchase of

capital stock by "holding companies" whereby there was brought about "the operation of bogus independent companies."

4. Likewise, in case resort be had to the debates of Congress we find that Congress intended to prohibit purchases of capital stock only in the event that interstate commerce would be substantially and injuriously affected by intercorporate stockholding.

II. To construe said Sections 7 and 11 as the Federal Trade Commission has construed them in and by the order under attack would make it necessary to consider grave constitutional questions which do not arise if said Sections are construed to mean precisely and only what they say.

1. The source of congressional authority to enact the Clayton Act is the Commerce Clause of the Constitution (Section 8, Art. I) which gives Congress power "to regulate commerce."

2. Sections 7 and 11 of the Clayton Act are subject to no constitutional infirmity if said sections are interpreted to mean what they clearly say, viz:

> That said sections apply to and cover only situations wherein the facts, judicially ascertained and determined, show that corporate ownership of stock is so postured as to create a direct and substantial obstruction in the current of interstate commerce and which ob-

struction will be removed from such interstate current by change in the ownership of such stock.

3. But to place upon said sections the strained construction necessary to uphold the order of the Commission would at once raise the grave and doubtful constitutional questions:

(a) May Congress forbid a property owner from selling his property and going business to a competitor, merely because the effect of such sale "may be to substantially lessen competition between" the seller and the buyer?

(b) If question (a) should be answered in the affirmative then may Congress forbid a corporation from openly acquiring, through ownership of all the stock of a corporate competitor, the going business of such competitor, under circumstances wherein the transaction would be inoffensive to the law if either seller or buyer, or both, were individuals—the respective positions in the trade, and the instrumentalities used in commerce of the respective corporate and individual vendors and vendees being precisely the same? In other words, may the law forbid to corporations, solely because they are corporations, what it permits to individuals in identical circumstances?

III. The claim by and for the Federal Trade Commission that such Commission has implied judicial power is without foundation.

1. By its order which is attacked herein the Commission has mistakenly assumed that an administrative agency (whose warrant from Congress confers no express authority beyond the entry of an order in certain circumstances that a corporation "divest itself of the stock held") has implied power to function in the orbit of a Court of Chancery, which high Court of Chancery (according to Cowell and Jacobs' Law Dictionary) has "absolute power to moderate the written law, govern its judgment by the law of nature and conscience, and ordering all things *juxta aequum et bonum.*"

2. So long as we keep in mind the fundamentals guaranteed by the Constitution.

(A) That an administrative agency of Congress cannot be given judicial power;

(B) That discriminations between corporations and individuals, in Federal legislation based upon the Commerce Clause, must be founded on some real difference in the manner by which corporations and individuals affect interstate commerce; and

(C) That Federal power to legislate under the Commerce Clause exists only if and when legislation reaches matters, subjects and things which directly—not incidentally and collaterally—affect and thus regulate interstate commerce,

we have no difficulty in so interpreting Sec-

tions 7 and 11 of the Clayton Act as to preserve them from constitutional objection. And these sections can be thus preserved only by rejecting the Commission's conception of its power, as evidenced by the order herein, because such conception is oblivious of constituional guarantees.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 781.

SWIFT & COMPANY, *Petitioner*,

vs.

FEDERAL TRADE COMMISSION, *Respondent*.

BRIEF AND ARGUMENT FOR PETITIONER.

Certiorari granted November 23, 1925 (R. 1616), brings here for review the judgment and decree of the Circuit Court of Appeals for the Seventh Circuit, entered February 16, 1925 (R. 1611), followed by denial of Petition for Rehearing on October 13, 1925. (R. 1613.) This judgment and decree, for the reasons stated in the separate opinions* of Judges Evans (R. 1603-10) and Alschuler (R. 1610) denied Swift & Company's Petition (R. 1-3) to review and set aside an order of the Federal Trade Commission, entered August 3, 1922, in a certain proceeding entitled "*Federal Trade Commission* v. *Swift & Company*, Docket No. 453."

* *Swift & Co.* v. *Federal Trade Commission*, 8 F. (2d) 595.

STATEMENT OF THE CASE.

The order entered by the Federal Trade Commission on August 3, 1922, thus here for review under Section 11 of the Clayton Act (38 Stat. 734; Comp. Stat., Sec. 8835j) required Swift & Company to:

> "(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and or operating, or causing to be held, controlled and or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall
>
> (2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by any one for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and or operations of said corporations, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and or holdings of such capital stocks.
>
> (3) In so divesting itself of such capital stocks

respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and desist from further engagements in unfair methods of competition in violation of an Act of Congress approved September 26, 1914, entitled, 'An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes,' and in so ceasing and desisting, shall Cease and Desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also Cease and Desist from further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and or control of the capital stock of either said Moultrie Packing Company or said Andalusia Packing Company and or through the control and or ownership of the properties, physical assets and businesses of either of said named corporations.

It Is Further Ordered, that the said respondent, Swift & Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth." (R. 90, 91.)

SPECIFICATION OF ERROR.

1. The order affirmatively shows on its face (by its attempted exercise of jurisdiction over "the control and/or ownership of properties, physical assets and businesses" (R. 90-91) that the Commission exceeded its authority. The power delegated to this administrative agency by Congress is specifically limited, by Section 11 of the Clayton Act, to the entry of an order requiring a corporation "to divest itself of the stock held."

2. The complaint (R. 6-13; 59-65) on which the order is predicated affirmatively shows on its face a lack of jurisdiction of the subject matter on the part of the Federal Trade Commission. The complaint stated as to the Moultrie Plant (R. 61) "than from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company and does now so operate the same" and as to the Andalusia Plant "that from about March 30, 1918 respondent has operated said plant and business as the plant and business of Swift & Company and does now so operate the same." Therefore, the motion to dismiss made by Swift & Company before the introduction of any evidence (R. 30, 31) should have been sustained.

3. If Section 7 of the Clayton Act be construed as the Federal Trade Commission has construed said section in these proceedings, viz.:

> That a corporation may not openly acquire the going business of a corporate competitor "when the effect of such acquisition may be to substantially lessen competition between the corporation" whose property is so acquired and the corporation making the acquisition—there being no claimed violation of

> the Sherman Act in respect to restraint of trade or attempt at monopoly,

then such construction would render said Section 7 unconstitutional. Therefore, the motion to dismiss, made by Swift & Company before the introduction of any evidence (R. 30, 31) should have been sustained. This motion challenged the constitutionality of the Act if construed or interpreted as the complaint construed said Act.

4. The record contains no evidence which tends to prove that there existed at the time of the filing of the complaint, or at the time of the entry of the order, any inter-corporate stockholding which was in such posture or relationship as to confer jurisdiction under Section 7 or to justify order under Section 11 of the Clayton Act.

The Facts.

The Moultrie plant was built at Moultrie, Georgia, in 1914. (R. 252.) Moultrie was then a town of about 5,000 population.

The Andalusia plant was built at Andalusia, Alabama, in 1916. Andalusia had a population less than that of Moultrie.

The situations at Moultrie and Andalusia were practically identical. Both communities are in relatively central positions in the southern part of their respective states. Thirty years ago the surrounding country was, practically speaking, an unbroken pine forest; the lumber and turpentine business the chief and practically the only industries. (R. 263, 381.) The territory was sparsely settled and pioneer conditions existed—pioneer conditions that were real, and which to a lesser extent continue to this day. Lack of roads, schools, transportation, markets, sound farming methods, good, or even

fair breeding stock are some of the handicaps yet to be overcome.

As soon as the land was partially cleared, cotton was planted. This system continued to the advent of the boll weevil in 1914, '15 and '16. For a few years prior to the erection of these plants, the citizens of these communities saw the boll weevil advancing year by year. (R. 382.) Finally their agriculture was made unprofitable.

At that time live stock raising as an industry did not exist. The few animals raised (not nearly enough for home consumption except during a few months of the fall and winter) were of inferior quality; the hogs were known locally as "razor backs" or "piney woods rooters," and the cattle as "piney woods cows." (R. 964.) Bankruptcy threatened the entire country and all branches of endeavor. Something had to be done to save the situation. The United States Department of Agriculture, the business men, the leading citizens, and the civic bodies recommended a diversification of crops and the production of live stock. But there was no market for live stock. There was not enough live stock in the country to attract a packer, or to cause any one of the companies engaged in that business to erect a plant. The basis of the development of the packing business is to get the live stock first; but it is impossible to promote live stock production unless the producers have someone to whom they may sell their live stock. The citizens of these communities decided to build the packing plants with the hope that when the coordinate development had been brought about they would be able to sell them to someone regularly engaged in that business. (R. 253.)

The reasons for the building of these plants are succinctly stated by T. E. Henderson, president and one of

the organizers of the Andalusia Packing Company. Mr. Henderson was called as a witness by the Commission and testified in response to question by Mr. Taylor, counsel for the Commission (R. 361), as follows:

> "Q. Will you please state which—just state very briefly the circumstances surrounding the organization of the Andalusia Packing Company.
>
> A. The war came on in 1914 and reduced prices of all agricultural products in our country to such a point that our people could not pay us, the banks and merchants and their creditors; we had heavy obligations, directly and indirectly; the boll weevil had made his first appearance—in a very limited way, however, in 1914; in 1915 in a very heavy way, and it was for the purpose of finding some other endeavor that a farmer could engage in by which he would pay his obligations that we decided to establish a packing plant, that he might grow hogs and sell them and realize some money from that source. As an illustration, I might say that normally cotton receipts in our town—in 1915—1914 first, were approximately 14,000 bales. In 1915 we had been reduced to about 2,000 bales, and it was a matter of life and death with us, financially, to find some line of endeavor, some pursuit that the farmer might follow that he could make a livelihood and live and pay his debts. Generally speaking, I would say that that was the cause of the building of this plant."

The reasons for building the Moultrie plant are stated by W. C. Vereen (Commission's witness, R. 252-3). He stated that he was president and one of the moving factors in the organization of the Moultrie Packing Company. In the latter part of 1912 and early 1913, the farmers became greatly discouraged on account of the boll weevil, which they knew would soon reach their territory. The business men of Moultrie, in order to offset this, appointed a committee to investigate the packing business. He was a member of this committee. They went through a number of western plants, came home, and recommended that a plant be built. They went

ahead, raised money and organized the Moultrie Packing Company. It was completed and began to operate in December, 1914. The sole desire of the stockholders was to benefit the community, and their hope was to get it started and then sell it to some packer, who would carry it along and thereby benefit their country and leave the stockholders free to carry on their usual vocations.

On cross-examination (R. 261-2) he stated that, because of the boll weevil, land values were going down and our belief was that if the plant was established, thus opening a market for live stock, this would permit to a considerable extent, a change from cotton to live stock. It worked as they had expected. Conditions improved, the farmers, instead of borrowing money for their spring cotton chopping, would sell some hogs. The stockholders agreed to sell if they could get a satisfactory price, so the plant was sold and in his own words (R. 262):

> "Our people are proud that we made the sale to them, to Swift and Company. Swift and Company have done everything in their power to help the farmers in that section, they have given out bulls, high-grade bulls to be used in that section to improve the live stock, and they have done the same way with chickens. Swift & Company have done just as we expected them to do, they have increased the capacity of that plant, and they have helped in every way to build up that community. No one there regrets the sale of the plant, we are glad of it, they have brought good citizens there, and we would like to get in some more just like them."

At each city a company was organized, with the stock widely distributed in small lots among the farmers and business men. The plants were built, were for sale and were willingly and gladly sold to Swift and Company at a fair price, each and every stockholder assenting to

the sale. (R. 255-8, 265, 365-372.) That there has been no cause for regret is shown by the testimony of the president of the Moultrie Chamber of Commerce, a leading business man and one of the chief organizers of the Moultrie plant, who said:

> "It was the best day's work we ever did as a community when we built the Moultrie plant. It was a better day's work when we sold it to Swift and Company." (Witness Pidcock, R. 868.)

When the southern farmers found their cotton crop unprofitable and turned to live stock raising, small packing plants sprang up in a number of small southern cities, to wit, Moultrie, Georgia; Andalusia, Alabama; Chipley, Florida; Tifton, Georgia; Macon, Georgia; Waycross, Georgia; Jacksonville, Florida; Statesboro, Georgia; Orangeburg, South Carolina; Spartanburg, South Carolina, and Natchez, Mississippi.

Swift and Company did not want to build another plant in the new live stock section of the South. It felt that the available volume of live stock would not justify additional plants. It did not want to interfere with the business of any established plant. (Witness Hunter, R. 1162, 3, 4, 5.)

On May 15, 1917, L. F. Swift, an officer of Swift and Company, met W. C. Vereen, president of the Moultrie Packing Company, at Jacksonville, Florida. Mr. Vereen's version of this conversation is as follows:

> "Mr. Swift and I went very carefully over the section of the country where we got hogs from, and he talked to me at considerable length trying to find out what I thought about their ability to increase the production of live stock in that section of the country. After I satisfied myself that they were going to increase the capacity of the plant and to operate it on, then we came to the price. Finally, we agreed upon that, and I gave him an option upon the stock that I owned myself, and we wrote it up—

he wrote it out himself—a little agreement binding me to try and buy up all the other stock at the same price he agreed to give me for mine. They have done everything in the world that he promised. I never had any dealings with fairer people in my life; they have lived up to every promise, and were just as reasonable in everything as they could be." (Witness Vereen; R. 873, 4.)

"They (the farmers) were very much encouraged when Swift and Company came in and bought the plant; it caused a better feeling around, because the public generally knew that the owners of the old Moultrie Packing Company did not invest their money because they wanted jobs, but they invested it because they took it in as a side line, because they wanted to help this section of the country. They knew when Swift and Company took it that Swift and Company had an unlimited amount of money and they could make it as big as they wanted to, could operate it better than we could. Consequently values, property values, as any one who is familiar with conditions here will tell you, advanced immediately, not only farm lands, but town lands." (Witness Vereen; R. 874.)

The reason, from the buyer's standpoint, for the transfer of certificates of stock to nominees of Swift and Company as a preliminary to the conveyance of physical assets by formal deed and bill of sale is shown in letter from Louis F. Swift to Edward F. Swift, dated May 19, 1917 (Commission's Exhibit No. 6, R. 1242), which is as follows:

"If we do anything with the Moultrie proposition, I should want it understood that we continue to run under the same name for a few months anyhow—until we get acquainted with it; and that absolutely no changes are to be made in their manner of making products—but continue in the same channels for at least one month until we know more about them.

My reason for the above is that there are so many soft hogs that I don't want the question of

Swift and Company's brands involved for the time being."

The reason, from the seller's standpoint, for such transfer to such nominees as such preliminary to formal conveyances is stated, as to the Andalusia Plant, by T. E. Henderson called as a witness by the Commission. Mr. Henderson had produced a copy of the so-called option which he gave to Mr. H. C. Carr, representing Swift and Company. (See Commission's Exhibit No. 111; R. 1398.) In reference to this option, he said that it was the understanding that if he and Mr. Darling (another organizer and director of the Andalusia Packing Company) sold their shares of capital stock to Swift and Company, while he and Mr. Darling were willing to sell at the price named, they were not willing to sell at any price unless it was perfectly satisfactory to all the remaining stockholders to sell their stock at the same price. It subsequently developed that it was satisfactory to all the remaining stockholders and the stock was all sold at $70 a share. (R. 369.)

The object and purpose of all parties to the transaction were to sell both plants to Swift and Company as going concerns. The desire of everyone who participated in the negotiations, whether on behalf of seller or buyer, was to have assurance that there would not be a single dissatisfied or disgruntled stockholder. (R. 256.)

Deeds and bills of sale were not made until each and every stockholder upon identical terms had parted with his stock. Nor did Swift and Company at any time hold direct legal title to the stock in either the Moultrie or Andalusia Company. The negotiations at all times were that Swift and Company should acquire and take over the physical plant, property and assets, providing this could be accomplished by and with the unanimous approval of all stockholders in the respective companies.

As a convenient means to that end the agreed purchase price, when paid, was charged on the books of Swift and Company (Commission's Ex. 29, 30; R. 1273, 1275) to "stock investment account"; new certificates were issued in the names of employees of Swift and Company, whose Law Department was instructed (R. 1242) "to take the necessary steps towards consummating the transfer", which the Law Department was advised was to include "land, buildings and other fixed assets, inventory of product and supplies, accounts, in short, net assets." (R. 1243.)

Pursuant to these instructions the necessary documents were prepared and the following resolution was adopted by the Board of Directors of the Moultrie Packing Company on November 3, 1917. (R. 1283, 1284):

> "WHEREAS, This Company is the owner of a certain meat Packing Plant, located at Moultrie, Georgia, and is operating said plant and engaged in the business of selling the products thereof, and
>
> WHEREAS, this company desires to go out of business and be wound up and liquidated, and
>
> WHEREAS, Swift and Company, an Illinois corporation, has offered to purchase all the business and property of every description and wheresoever situated belonging to this Company, and to pay therefor the book value as shown by the books of this Company at the close of business on November 3rd, 1917, and to assume all the debts, contracts, obligations and liabilities of this Company at the close of business on said date, and
>
> WHEREAS, said offer contains a full and adequate consideration for the same;
>
> NOW, THEREFORE, IT IS HEREBY RESOLVED, That the said business and property be sold to the said Swift and Company for the said sum, and for the further consideration of the assumption by said Swift and Company of all the debts, contracts, obligations and liabilities of this Company as aforesaid, and

RESOLVED, That this Company be wound up and liquidated and its net assets be distributed among the stockholders in proportion to their holdings; and

RESOLVED, That the President of this Company be and he is hereby authorized and directed to take such action as may be necessary to carry into effect these resolutions.

Deed dated November 24, 1917 (R. 1481), and bill of sale dated November 3, 1917 (R. 1483), were executed and delivered to Swift and Company; and on January 5, 1918, this action was approved and ratified at a stockholders' meeting by the unanimous adoption of the following resolution (R. 1286):

"WHEREAS, The Board of Directors of this Company at a meeting held at the office of the Company in the City of Chicago, State of Illinois, November 3, 1917, duly adopted a resolution authorizing and directing the President of this Company to sell to Swift and Company all the business and property of every description and wheresoever situated belonging to this Company at the book value thereof as shown by the books of the Company at the close of business on November 3, 1917, and the assumption by said Swift and Company of all the debts, contracts, obligations, and liabilities of this Company at the close of business on said date, and

WHEREAS, Pursuant to said authority the President of this Company has sold all the business and property of this Company to Swift and Company for the consideration aforesaid; and

WHEREAS, Said price is a full and adequate consideration for the same,

NOW, THEREFORE, IT IS HEREBY RESOLVED, That the action of the Board of Directors and the President of the Company in disposing of the property and business of this Company to said Swift and Company as aforesaid, be and the same is hereby in all respects ratified, approved and confirmed, and

RESOLVED, That this Company be wound up, liquidated and its net assets be distributed among the stockholders in proportion to their holdings, and

RESOLVED, That the Board of Directors of this Company be and they are hereby authorized and directed to take any action that may be necessary to carry into effect these resolutions."

Similar course was followed as to the Andalusia Company. At a meeting of the Directors on March 30, 1918, the following resolution was adopted (R. 1304):

"WHEREAS, Swift and Company, a corporation of the State of Illinois, has offered to purchase all of the property and business of this company at the book value thereof at the close of business Saturday, March 30, 1918, for cash and assume all the debts, liabilities and obligations of this company; and

WHEREAS, it is the judgment of this Board of Directors that the price aforesaid is a full and fair price for the property and business of this company, and it is to the best interest of this company to accept said offer;

THEREFORE, RESOLVED, That said offer be and the same is hereby accepted; and

RESOLVED, FURTHER, That the proper officers of this company be and they hereby are authorized and instructed to convey, assign and transfer to said Swift and Company all of the property and business of this company by proper instruments of conveyance on receipt of the purchase price aforesaid."

Deed (R. 1477) and bill of sale (R. 1480) both dated March 30, 1918, were executed and delivered to Swift and Company in pursuance of this resolution.

In the interim during which the legal formalities were being worked out by the Law Department of Swift and Company to consummate the conveyance of physical assets, the Federal Trade Commission was advised in correspondence with Moultrie Packing Company, in explanation of certain answers on forms prescribed by the Commission, that on October 5, 1917 (Commission's Ex. 99, R. 1373), "We are subsidiary to Swift and Com-

pany"; and after the transfer had been consummated by deed and bill of sale, in response to communication from the Commission addressed to Moultrie Packing Company, dated February 11, 1918, reply to the Commission, dated February 20, 1918, is made over the signature of Swift & Company, on stationery which has the heading "Swift and Company—Moultrie, Ga." (Commission's Ex. 101, R. 1386, 1387.)

Senate Resolution 133, 66th Congress, 1st Session, adopted July 25, 1919, directed the Federal Trade Commission to make immediate investigation of southern live stock prices and marketing conditions. The Report of the Commission in response to such resolution appears as respondent's Ex. 1 (R. 1525-1539) and in such Report appears the following (R. 1533):

> "Simultaneously with the recent development of the live stock industry in the southeastern States, several modern packing plants were established. The records of the Bureau of Animal Industry, July 25, 1919, show that the following slaughtering and packing plants are operating in these States under its inspection, all of which, except the Birmingham Packing Co., have been established within the past five or six years:
>
> Swift & Co., Andalusia, Ala.
> Birmingham Packing Co., Birmingham, Ala.
> A. D. Davis Packing Co., Mobile, Ala.
> Swift & Co., Moultrie, Ga.
> Macon Packing Co. (Allied Packers), Macon, Ga.
> Armour & Co., Tifton, Ga.
> Augusta Packing Co., Augusta, Ga.
> Armour & Co., Jacksonville, Fla.
> Chipley Packing Co., Chipley, Fla.
> Mississippi Packing Co. (Wilson & Co. (Inc.)), Natchez, Miss."

In this case there is involved no question of "bogus independent" or "fake competitor." In fact, the amended complaint specifically charged as to the Moultrie Plant that "from about November 3, 1917, respond-

ent has operated said plant and business as the plant and business of Swift and Company and does now so operate the same." (R. 61.) And as to the Andalusia Plant that "from about March 30, 1918, respondent has operated said plant and business as the plant and business of Swift and Company and does now so operate the same." (R. 64.)

Respondent's Ex. 9 (R. 1553) and Ex. 10 (R. 1555) are photographs. Exhibit 9 shows the plant of the Moultrie Packing Company which was deeded to Swift and Company. Exhibit 10 shows the plant (with the name of its owner "Swift and Company" prominently displayed) which the grantee in the deed of November 24, 1917, has brought into existence through enlargements and extensions. The expenditures for enlargements and extensions are much more than the total original investment.

Just prior to the acquisition, the Moultrie plant was value at about $150,000, while on October 30, 1920, Swift and Company had an investment in said plant and equipment of $1,114,776, having made an expenditure for betterment between the date of acquisition and October 30, 1920, of about $964,000. (Commision's Ex. 57, R. 1324, and Respondent's Ex. 13, R. 1557, 8.)

Just prior to the acquisition, the plant and equipment of the Andalusia Packing Company was valued at about $143,000, while on July 2, 1921, Swift and Company had an investment in the said plant and equipment of about $423,000, having made an expenditure for betterment between the time of acquisition and July 2, 1921, of $280,000. (Respondent's Ex. 27, R. 1571.)

F. R. Pidcock, one of the organizers and stockholders in the Moultrie Packing Company and president of the Moultrie Chamber of Commerce, testified (R. 867, 8):

"This immediate section is in better condition and the land and property values are higher than in any other section of the State of Georgia. If the Federal Trade Commission orders Swift and Company to sell the Moultrie plant, it would mean closing it down. It would not be purchased by anybody here. So far as the people of this community are concerned, they are not able to buy it."

Oscar M. Dugger, president of the Andalusia Chamber of Commerce, and publisher of two newspapers, testified (R. 935-941):

"I was here in Andalusia before the old Andalusia Packing Company began to operate, and have been continuously since, engaged in the newspaper business. I have kept up with market conditions from that time to now. I unhesitatingly state that the prices paid for live stock and general market conditions have been better under the management of Swift and Company than they were under the management of the old company. I know this because I have printed the market quotations in my newspapers and have compared them with markets in other trade centers, such as Chicago. I have correspondents for my newspapers throughout this county and section, and as a public man and as a newspaper man I come in contact with those correspondents and receive information. I have never heard of any dissatisfaction at all among the people of this section or among the stockholders with reference to the operation of the plant by Swift and Company. I would assess the sentiment as unanimous that the change was beneficial for the reason that it was taken over by a concern that was able to finance it, and in such measures that would provide a market for all live stock that the farmers of this section could produce, whereas the capital before was limited, and the amount that it would consume would necessarily be circumscribed; and that fact was sufficient to give a wonderful impetus to the growth and to the raising of hogs and cattle in this territory. To my knowledge, right after Swift and Company purchased this plant they improved it. They made great improvements in the plant and the

facilities, and a very marked increase in the number of persons employed to take care of them and the facilities for handling live stock. From my observation and my knowledge of conditions, after Swift and Company purchased the plant there was no tendency to suppress competition in the buying and selling of live stock, or the finished product; nor was there any suppression of competition. So far as my knowledge goes, it gave impetus to competition in that it became known that they were in the cattle and hog business here, which served to bring in more buyers, and the sales (hog sales) have increased in the various county seats around here. That was something we never heard of prior to their coming here and establishing a market for hogs and cattle all over this section. Buyers came here and have been attracted here, and it has improved the cattle and hog conditions and the quality also.

Swift and Company has had this plant since 1917. With their experience in the operation and their familiarity with this section of the country on account of that four years of experience, in my judgment no other packer, or no other association or people could operate the plant with so much benefit to the general public as Swift and Company on account of this experience. Others would have to learn it, take it up and learn what these people already know; that is, regarding local conditions and handling the people, and all like that, as you have to learn the territory."

The testimony of these two witnesses is thus excerpted in order that the Court may obtain therefrom the trend and tenor of the corroborating testimony given by many leading business men of the communities who were called as witnesses by respondent. (R. 847-986.)

Since the acquisition Swift and Company operated the two plants continuously to the date of taking testimony, with the following results:

Moultrie (Respondent's Ex. 18, R. 1562):

1918	Loss	$273,768.22
1919	Loss	259,477.93
1920	Loss	214,871.89
1921	(8 Months) Loss	231,011.87

Andalusia (Respondent's Ex. 23, R. 1569):

1917	August, September and October	$ 3,749.59	Profit
1918	52 weeks	120,422.96	Loss
1919	52 weeks	195,157.54	Loss
1920	52 weeks	172,386.53	Loss
1921	35 weeks	173,579.72	Loss

Corroboration of the fact that the "section or community" (38 Stat. 731, Comp. Stat. 8835g) directly affected by the order of the Commission esteems such order injuriously destructive of the economic welfare of said "section or comunity," and in no manner remedial, is given by the attempted intervention of the Moultrie Chamber of Commerce (R. 34-38) and of the Andalusia Chamber of Commerce (R. 40-47). While the Commission (R. 40-48) denied both petitions for intervention yet the Circuit Court of Appeals granted leave (R. 1602) to counsel for these Chambers of Commerce to appear *amicus curiae* and file brief; and in the Circuit Court of Appeals both opinions seemingly recognize that economic loss rather than economic gain to these sections and communities will result from enforcement of the order of the Federal Trade Commission.

In the opinion by Judge Evans (R. 1603-10) it is said at page 1607:

> "Nor are we, in construing this legislation, called upon to pass judgment respecting its wisdom. Conceding that the Congress was authorized under the commerce clause and other sections of, or amendments to, the Constitution, to deal with the subject matter, it alone could determine the wisdom of such legislation and make such exceptions or reserva-

tions as it deemed the needs of commerce, and the welfare of the public, required.

We are, therefore, confronted with a simple legal question, one of statutory construction. We must divorce it from the associated economic questions." (8 F. (2d), 597.)

In the opinion by Judge Alschuler it is said (R. 1610):

"The apparent considerable benefit to the localities from the increased manufacturing activities there, which followed the transactions complained of, illustrates the possible hardship and resultant embarrassment in strictly applying the statute in accordance with its plain and comprehensive terms." (8 F. (2d), 599.)

It is respectfully submitted that the opinions of the Circuit Judges in this case, in their construction of the Clayton Act, bear striking similarity to the opinion of the Circuit Judges in New York in the *American Tobacco case* in their construction of the Sherman Act. In the latter case (*United States v. American Tobacco Co.*, 164 Fed. 700) it was said (701-2):

"By insensible degrees, under the operation of many causes, business, manufacturing and trading alike, has more and more developed a tendency toward larger and larger aggregations of capital and more extensive combinations of individual enterprise. It is contended that, under existing conditions, in that way only can production be increased and cheapened, new markets opened and developed, stability in reasonable prices secured, and industrial progress assured. But every aggregation of individuals or corporations, formerly independent, immediately upon its formation terminates an existing competition, whether or not some other competition may subsequently arise. The act as above construed prohibits every contract or combination in restraint of competition. Size is not made the test: Two individuals who have been driving rival express wagons between villages in two contiguous states, who enter into a combination to join forces and operate a single line, restrain an existing competition; and it would seem to make little difference

whether they make such combination more effective by forming a partnership or not.

Accepting this construction of the statute, as it would seem this court must accept it, there can be little doubt that it has been violated in this case."

But when the *American Tobacco case* was brought to this Court for review (221 U. S. 106) not only did this Court refuse to give approval to such interpretation of the Sherman Act, but the position taken by counsel for the Government in their brief is summarized as follows, 221 U. S. at pages 115 and 116:

"The Government does not maintain that restraint, obstruction or hindrance of commerce is denounced by the act unless direct and material either in tendency or effect; and, of course, do not insist that every contract or arrangement which merely eliminates a competitor in interstate trade is for that sole reason unlawful. The statute was intended to foster, not destroy, business operations universally regarded as promotive of public welfare. The suggestion that the statute denounces as criminal every party to any sort of contract which eliminates any independent dealer in interstate commerce however insignificant is untenable. But when, as in the present case, the restraint is the direct consequence of or that to which the challenged contract or combination necessarily tends, and is also of a material or substantial character it is clearly within the prohibition. The Government does not avouch and will not attempt to support this extreme construction which was adopted by the presiding judge below."

Seemingly counsel for the United States, when taking the above position in their brief in this Court in the *American Tobacco case*, must have foreseen that the extreme construction of the Sherman Act which they declined to avouch "cannot be constitutionally applied, because to do so would extend the power of Congress to subjects *de hors* the reach of its authority to regulate commerce." (*Standard Oil Co.* v. *United States*, 221 U. S. 1, 68.)

SUMMARY OF ARGUMENT.

I.

SECTIONS 7 AND 11 OF THE CLAYTON ACT DO NOT PURPORT TO CONFER POWER OR JURISDICTION UPON THE FEDERAL TRADE COMMISSION OVER PLANTS AND PROPERTIES OR PHYSICAL ASSETS; AND THE DEBATES OF CONGRESS AFFIRMATIVELY SHOW THAT CONGRESS HAD NO INTENTION TO CONFER SUCH POWER OR JURISDICTION.

Congress has not delegated to its administrative agency designated as Federal Trade Commission, any power over the ownership of "plants, properties and physical assets." The question of the legality of ownership or operation (in so far as any claimed illegality of ownership or operation is because of Federal Anti-Trust laws) has been committed by Congress to the Federal Courts for determination in "proceedings in equity" instituted by the Attorney General of the United States under Section 4 of the Sherman Act (26 Stat. 209), wherein such Federal Court of Equity may make such "order or prohibition as shall be deemed just in the premises."

The intent of Congress is clearly expressed. Section 7 of the Clayton Act precisely defines certain specific situations arising out of intercorporate stockholding wherein the administrative agency is authorized to issue a single and exclusive form of remedial order which Section 11 defines with like precision, viz, "divestiture of stock held."

Even if the language of Sections 7 and 11 were not so clear and unambiguous and even if resort be had to the debates of Congress we find that it was the intention of

Congress, through enactment of Section 7 of the Clayton Act to prohibit, under certain conditions, the purchase of capital stock by "holding companies" and thus to prevent a specific economic evil viz, "the operation of bogus independent companies."

Likewise, in case resort be had to the debates of Congress we find that Congress intended to prohibit purchases of capital stock only in the event that interstate commerce was, through such purchases, directly, substantially and injuriously affected.

II.

TO CONSTRUE SAID SECTIONS 7 AND 11 AS THE FEDERAL TRADE COMMISSION HAS CONSTRUED THEM IN AND BY THE ORDER UNDER ATTACK WOULD MAKE IT NECESSARY TO CONSIDER GRAVE CONSTITUTIONAL QUESTIONS WHICH DO NOT ARISE IF SAID SECTIONS ARE CONSTRUED TO MEAN PRECISELY AND ONLY WHAT THEY SAY.

The source of congressional authority to enact the Clayton Act is the Commerce Clause of the Constitution (Sec. 8, Art. 1) which gives Congress power "to regulate commerce."

Sections 7 and 11 of the Clayton Act are subject to no unconstitutional infirmity if said sections are interpreted to mean what they clearly say, viz:

> That they apply to and cover only situations wherein the facts, judicially ascertained and determined, show that corporate ownership of stock is so postured as to create a direct and substantial obstruction in the current of interstate commerce and which obstruction will be removed from such interstate current by change in the ownership of such stock.

But to place upon said sections the strained construction necessary to uphold the order of the Commission

would at once raise the grave and doubtful constitutional questions:

1. May Congress prohibit a property owner from selling his property and going business to a competitor, merely because the effect of such sale "may be to substantially lessen competition between" the seller and the buyer?

2. If this question should be answered in the affirmative then may Congress forbid a corporation from openly acquiring the property and going business of a corporate competitor, under circumstances wherein the transaction would be inoffensive to the law if seller or buyer, or both, were individuals—the respective positions in the trade, and the instrumentalities used in commerce of the respective corporate and individual vendors and vendees being precisely the same? In other words, may the law forbid to corporations, solely because they are corporations, what it permits to individuals in identical circumstances?

III.

THE CLAIM BY AND FOR THE FEDERAL TRADE COMMISSION THAT SUCH COMMISSION HAS IMPLIED JUDICIAL POWER IS WITHOUT FOUNDATION.

So long as we keep in mind the fundamentals guaranteed by the Constitution,

(A) That an administrative agency of Congress cannot be given judicial power;

(B) That discriminations between corporations and individuals, in Federal legislation based upon the Commerce Clause, must be founded on some real difference in the manner by which corporations and individuals affect interstate commerce; and

(C) That Federal power to legislate under the Commerce Clause exists only if and when legislation reaches matters, subjects, and things which directly—not incidentally and collaterally—affect and thus regulate interstate commerce,

we have no difficulty in so interpreting Sections 7 and 11 of the Clayton Act as to preserve them from constitutional objection, and these sections can be thus preserved only by rejecting the Commission's conception of its power, as evidenced by the order herein, because such conception is oblivious of constitutional guarantees.

ARGUMENT.

I.

SECTIONS 7 AND 11 OF THE CLAYTON ACT DO NOT PURPORT TO CONFER POWER OR JURISDICTION UPON THE FEDERAL TRADE COMMISSION OVER PLANTS AND PROPERTIES OR PHYSICAL ASSETS; AND THE DEBATES OF CONGRESS AFFIRMATIVELY SHOW THAT CONGRESS HAD NO INTENTION TO CONFER SUCH POWER OR JURISDICTION.

The portions of the Clayton Act here pertinent are found in Sections 7 and 11 (38 Stat., 731-4; Comp. Stat. Secs. 8835g, 8835j) and read as follows:

> "SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substan-

tial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SECTION 11. * * * If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its

> findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and *divest itself of the stock held* or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. * * * The court * * * shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree affirming, modifying or setting aside the order of the commission or board." (Italics ours.)

It is to be noted that in the second paragraph of Section seven above quoted, after repeating the prohibitive language of the first paragraph, there is added:

> "Where the effect of such acquisition or the use of such stock by the voting or granting of proxies or otherwise, etc."

It is to be further noted that in the third paragraph of said Section seven, exception is made in favor of "corporations purchasing such stock solely for investment and not using the same by voting or otherwise," etc. And in the same paragraph, in the clause concerning subsidiaries, permission is given for "owning and holding all or a part of the stock of such subsidiary."

It is to be further noted that Section eleven provides a specific statutory remedy for the removal (if and when found to exist) of restraint upon competition between existing competitors in its provision that the specific statutory order in such event shall be that the corporation thus found to be restraining the normal activities of its competitor through stock ownership shall "divest itself of the stock held."

The words "where the effect of such acquisition may be to substantially lessen competition between the cor-

porations whose stock is so acquired and the corporation making the acquisition" are clearly intended to cover only the situation where two or more ostensible competitors are found, by reason of their intercorporate stockholding relationship, not to function with the normal competitive activity which would exist were it not for such intercorporate stockholding relationship.

Thus the provisions of this paragraph contemplate (a) the existence of two corporations which are competitors in the same line of business; (b) that one of them buys the stock or other share capital of the other; (c) that such other continues functioning in ostensible competition with the corporation making the acquisition; (d) that between the two corporations competition is substantially lessened; (e) that such substantial lessening of competition is the effect of such acquisition; and (f) that such lessened competition may be restored to its normal state by application of the statutory remedy provided in Section eleven whereby the corporation which acquired the stock may be ordered to "divest itself of the stock held."

In the case of *Aluminum Company of America* v. *Federal Trade Commission*, 284 Fed. 401 (certiorari denied 261 U. S. 616), the majority of the court disagreed with Judge Buffington *as to the facts* which created the premise from which Judge Buffington, in his dissenting opinion, reached the conclusion that the Federal Trade Commission was without jurisdiction; but the majority of the court seemingly makes clear the fact that their disagreement with Judge Buffington is not with reference to the true legal interpretation of the first paragraph of Section seven, but is rather that in the view of the majority of the court the facts in the *Aluminum Company case* came within said first paragraph as defined and

analyzed by Judge Buffington. Thus, in the majority opinion, it is stated, at p. 406:

> "We are of opinion that the findings of the Commission that there was competition between the Aluminum Company and the Cleveland Company during the period in controversy is supported by the testimony."

Again, on page 407, the majority opinion states:

> "But curtailing this discussion, we are not prepared to admit the premise from which the Aluminum Company deduces its conclusion. In other words, we do not find that at the time the Aluminum Company acquired the stock of the Rolling Mills Company the latter was not engaged in commerce and was not, potentially, engaged in competition with the Aluminum Company, for these reasons:" etc.

As we view it, the difference between the majority of the court and Judge Buffington is not concerning the true construction of the first paragraph of Section seven, but rather concerning the applicability of the facts in the *Aluminum Company* case to the said paragraph, as thus construed. Judge Buffington says, at page 409, after quoting the first paragraph of Section seven:

> "These plainly expressed provisions contemplate the existence of two corporations which are competitors in the same line of business, and one of them, with the view to substantially lessening competition or creating a monopoly, buying the whole or a part of the stock of its competitor. That two existing competing corporations were the subjects of the clause, is shown plainly by its terms. The offending buying corporation is aptly described as being in business, by the words 'no corporation engaged in commerce,' and the other corporation is described as being in like manner engaged in commerce by the words 'another corporation engaged *also* in commerce,' and that the two corporations thus described were each actually engaged in competition of a substantial character, is evidenced by

the fact that the stated object of the law was to prevent the two corporations engaged in commerce from doing a thing 'the effect of which was to *substantially lessen* competition,' or which tended 'to create a monopoly of any *line of commerce.*' Moreover, the word 'acquire' is an apt one to describe the buying by one corporation of the stock of another competing corporation, as will be seen by reference to the proviso in the third paragraph that 'this section shall not apply to corporations *purchasing such stock* solely for investment and not using the same by voting or otherwise to bring about, or any attempt to bring about, the substantial *lessening of competition,*' and also by reference to Section 11 of the act (Comp. Stat. Sec. 8835j), where the remedy against the stock-acquiring corporation is 'to cease and desist from such violations and *divest* itself of the stock held.' Such divesting would restore the competitive corporation to its former competing status.

Clearly, such was the situation to which this section was directed, but lest the stock of two or more corporations thus engaged in competition, should be bought up not by one another, but a holding company which was not engaged in commerce, the next paragraph was added, which provided:

> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

In *Standard Oil Co.* v. *United States*, 221 U. S. 1, Chief Justice White enumerates, at pages 41-43, some of the means or devices by which defendant sought to restrain trade and attain monopoly. In such enumeration the Chief Justice sets forth the holding company (p.

41), preferences and discriminations (p. 42), local price cutting (p. 43), and "the operation of bogus independent companies" (p. 43).

As was stated by Mr. Justice Day, in *Standard Fashion Co.* v. *Magrane-Houston Co.* 258 U. S. 346, 355:

> "The Clayton Act, as the title and the history of its enactment disclose, was intended to supplement the purpose and effect of other anti-trust legislation, and principally the Sherman Act of 1890. The latter act has been interpreted by this court to apply to contracts, combinations and conspiracies which unduly obstruct the free and natural flow of commerce."

And it was clearly intended (and, as we submit, clearly stated) by the Clayton Act, to arrest, by specific directions to an administrative agency, *certain practices* or methods theretofore found, under certain circumstances, to have been efficient in unduly restraining trade and in furthering attempts to monopolize. Accordingly, Congress enumerated, in the Clayton Act, most of *the practices* set forth in the opinion in the *Standard Oil case* (pp. 41-43) and by Section 7 (as we contend) legislated against the "holding company" and the "bogus independent," and set up as the single, exclusive writ of execution against *this practice* an order that the company restraining the free play of competition through stock ownership "divest itself of the stock held."

In *Wilder Mfg. Co.* v. *Corn Products Refining Co.* 236 U. S. 163, Mr. Chief Justice White denied the right of an individual litigant to invoke, in civil litigation, the provisions of the Sherman Anti-Trust Act. He says (p. 174) it is familiar doctrine that "where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes"; and cites in support of this "familiar doc-

trine" the cases *Farmers' & Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 35; *Barnet* v. *National Bank*, 98 U. S. 555; *Oates* v. *National Bank*, 100 U. S. 239; *Stephens* v. *Monongahela Bank*, 111 U. S. 197; *Tenn. Coal Co.* v. *George*, 233 U. S. 354, 359.

THE CONSTRUCTION ESSENTIAL TO SUPPORT THE ORDER OF THE COMMISSION DOES VIOLENCE TO THE LEGISLATIVE PURPOSE IN PASSING SECTION SEVEN.

(a) *It was the intention of Congress, through enactment of Section 7 of the Clayton Act to prohibit, under certain conditions, the purchase of capital stock by "holding companies" whereby there was brought about "the operation of bogus independent companies."*

In the report from the Committee on the Judiciary, submitted July 22, 1914, Senate Report 698, 63d Congress, Second Session, it is stated, the purpose of the Clayton Act is to supplement the Sherman Anti-trust Act of July 2, 1890, and other anti-trust legislation. Continuing, the report states:

> "Broadly stated, the bill, in its treatment of unlawful restraints and monopoly, seeks to prohibit and make unlawful *certain trade practices*, which, as a rule, singly and in themselves, are not covered by the Act of July 2, 1890, or other existing anti-trust acts, and thus, by making *these practices* illegal, to arrest the creation of trusts, conspiracies, and monopolies in their incipiency, before consummation. Among others of these *trade practices* which are denounced and made unlawful may be mentioned discrimination in prices for the purpose of wrongfully injuring or destroying the business of competitors; exclusive and tying contracts; *holding companies;* and interlocking directorates."

That it was *a definite trade practice*, namely "the operation of bogus independent companies" by and through the action taken by "holding companies" in

unduly lessening competition and restraining trade, that Congress had in mind, is conclusively shown by reference to page 13 of the report of this committee, where what is now Section 7 of the Clayton Act (then Section 8) is fully explained as follows:

> "Section 8 deals with what is commonly known as the 'holding company,' which is a common and favorite method of promoting monopoly. 'Holding company' is a term, generally understood to mean a company that holds the stock of another company or companies, but as we understood the term a 'holding company' is a company whose *primary* purpose is to hold stock of other companies. It has usually issued its own shares in exchange for these stocks, and is a means of holding under one control the competing companies whose stocks it has thus acquired. As thus defined a 'holding company' is an abomination and in our judgment is a mere incorporated form of the old-fashioned trust. Most of the corporations engaged in interstate commerce are organized under the laws of one or the other of the states. It is right that this should be so, and it is right that the various states, each of which has the right to exclude corporations of any other state from its borders, should exhibit comity to these other states, and that the Federal Government, which perhaps has the right to exclude corporations of any state from interstate commerce, should exhibit comity to all the states.
>
> At common law a corporation had no right to own stock in another corporation, but from time to time the various states have by special statutes, permitted it, until now certainly more than a majority of all the states permit corporate stockholding either generally or of certain kinds and under certain conditions. This legislation in its early operation may have served a useful, economic purpose. Trade and commerce could do as well without steam and electricity as without the idea of the commercial unit which is embodied in the word 'corporation.' Hence there are certain corporations which may properly be interested with individuals other than its own stockholders, but experience has taught

> us that *the 'holding company' as above described* no longer serves any purpose that is helpful to either business or the community at large *when it is operated purely as a 'holding company.'* Section 8 is intended to eliminate this evil so far as it is possible to do so, making such exceptions from the law as seem to be wise, which exceptions have been found necessary by business experience and conditions, and the exceptions herein made are those which are not deemed monopolistic and do not tend to restrain trade." (Italics ours.)

In the text entitled "Business Organizations and Combinations," by Louis H. Haney, formerly an examiner of the Federal Trade Commission, we find the holding company defined as follows (page 216):

> "*Definition and General Nature.* A holding company is a form of business organization (established through partial or temporary consolidation) which is created for the purpose of combining other corporations by owning a controlling amount of their stock. It necessarily involves the creation or the prior existence of a corporation which has power to hold the stock of other corporations, which corporation proceeds to acquire such stocks by exchanging its own securities for them, or by other means of purchase. *The controlled corporations are nominally independent and operate under their own names*, but they are or can be effectively managed by the officers of the holding company, whose directors vote their stocks, or a controlling part thereof, and so elect their directors. In this way, the combined plants are firmly bound together. The holding company is organized just as any other corporation, *but its purpose—at least its chief purpose—is merely to hold the stocks of other and subsidiary companies.* 'The attitude of these combinations is that of a stockholder in many corporations which seeks to manipulate them so as to promote its own private interest.'"

Again, we find by reference to page 46 of the report of the Committee on the Judiciary of the House, a further statement showing it was the intention of Congress

that this section should prohibit interference with trade and commerce, or the creation of a monopoly, through the operation of "*holding companies.*" The report states:

> "SEC. 8. This is the section of the bill directed against what are termed *holding companies*, and the object of the measure is stated in the report of the Committee on the Judiciary of the House of Representatives, heretofore reproduced herein and to which reference is now again made."

Likewise, we find throughout the debates in Congress upon Section 8 (now Section 7) of the Clayton Act, senators and representatives continually refer to such section as the "*holding company*" provision of the act. For example, Senator Nelson, one of the conferees, said:

> "This permits a *holding company* to buy the stock of any other company and hold it as a matter of investment, and unless you can show that it has been done *for the purpose of substantially lessening competition, the company is not liable.*"

Excerpts from Congressional Record, August 27, 1914, pp. 14315, 6:

> "Mr. Cummins: * * * I have always very much doubted whether we needed any additional legislation with regard to what are ordinarily known as holding companies; that is, where one company holds the stock or controls the stock of two or more corporations which are engaged in competitive business. * * * We forbid, in the first place, intercorporate stockholding where the effect would be to substantially lessen competition as between two corporation. We proceed to make an exception to that rule in this proviso that eliminates subsidiary corporations. Therefore it is evident that the framers of the section thought there was some subsidiary corporation which would fall within the operation of the first part of the section unless expressly withdrawn. * * * The corporation that is here called upon to act must undertake to say, first, whether the aquisition of the stock of another corporation will substantially lessen competition

between them. It must first undertake to say whether they are competitive in character, then whether the acquisition of stock will substantially lessen the rivalry between them. Then it must undertake to decide whether the one is a subsidiary corporation, whether it is really a branch or carrying forward of business in which the parent corporation, if I may use that term, is engaged. * * * I cannot quite agree with the Senator from Montana. Suppose there were a hundred corporations engaged in a certain kind of business scattered all over the United States. I do not believe it would be a violation of the anti-trust law for one corporation of the hundred to sell out to another. There would still remain in all probability, that full and substantial competition which the anti-trust law requires. I do not think that the anti-trust law condemns every lessening of competition; otherwise it would have to be construed to mean that one concern could not under any circumstances buy or absorb another. I think it depends on circumstances whether such a transaction can lawfully occur or not.

Mr. Walsh: That, of course, is qualified by the clause where the effect is to substantially lessen competition.

Mr. Cummins: It would lessen competition as between the two but, of course, if one had a right under the law to buy out the other it could not be any offense against the law, as it is now, for one to acquire the control of the other. It is just that case that we want, as I think, to prohibit, so that if a consolidation can lawfully occur under the anti-trust laws, it shall be an open, public consolidation, so that everybody can know what is transpiring. * * * I do not believe that is the proper construction of the anti-trust law; otherwise there could be no sale of business. I think there can be, but *wherever the law permits the sale of the business then it ought to be open and public, and a corporation ought not to acquire control of a business simply through the purchase of the stock of a company which continues under its own name, and, so far as the public knows, is independent in its man-*

agement. That is what I think this section is intended in the main to prevent." (Italics ours.)

From this the conclusion is inevitable that it was never the intention of Congress to forbid the stockholders of a corporation, which might be distributing a portion of its products in interstate commerce, from selling their entire holdings of capital stock to a corporation,—even though the purchaser was a competitor also engaged in interstate commerce—which would take over and operate the business under its own name as owner thereof. Congress intended to forbid the acquisition of a portion of the capital stock or all of the capital stock of another company by a "*holding company*" where such stock control was acquired, or was used, *for the purpose and with the intention of lessening competition between the buyer and seller, or restraining trade or commerce or creating a monopoly.* By Section 7 of the Clayton Act Congress intended to prevent the substantial lessening of competition and restraint of interstate commerce, by and through use of a well known, recognized method of accomplishing such results, viz., through the indirect means known as "holding companies," or (in the language of Chief Justice White in 221 U. S. 43) "the operation of bogus independent companies" whose primary intention, purpose and procedure was that of acquiring capital stock in a competing corporation for the ulterior object of substantially lessening competition or restraining trade and commerce.

(b) *It was the intention of Congress, through enactment of Section 7 of the Clayton Act, to prohibit, under certain conditions, purchases of capital stock only in the event interstate commerce would be directly, substantially and injuriously affected thereby.*

By reference to the debates as to the understanding and intention of Congress in enacting this section of the

Clayton Act, we find the following statement by Mr. Flood of the House conferees as to the reason for placing in the bill the word "substantially" (Congressional Record, October 8, 1914, page 16318):

> "And since the gentleman has asked me that question, I desire to take up now briefly that part of the report covering Sections 2, 3 and 7. * * * We have been criticized for injecting or inserting certain words into Sections 2 and 3 in conference. Where did those mysterious words 'substantially lessen competition or tend to create a monopoly' originate? They were incorporated in Section 8, the holding company provision of the bill as it passed this House. They passed muster in the Senate of the United States and were retained in the holding-company provision as it passed the Senate and were retained in conference. In modifying and changing Sections 2 and 3, so as to make the acts prohibited therein unlawful, without making them penal, it became necessary to change the wording of each, in other respects. We took the language that had been already approved by both the House and the Senate in another section, the one relating to holding companies, and applied it to Sections 2 and 3, the latter corresponding to our Section 4, so that the three sections namely, Sections 2, 3 and 7 of the conferference report are in harmony now, all dealing with the questions of contracts, the same principle being applied to each one of them.
>
> The genetleman from Minnesota (Mr. Volstead) criticizes this language and criticizes these provisions, claiming that we are in some way interfering with the operations of the Sherman anti-trust law; at least he fears we are. Not at all. That language did not originate with our committee. That language originated from a discussion in the opinion of the Supreme Court of the United States in the case of the *Addyston Pipe & Steel Co.* v. *United States*. The Court, in discussing this very question of contracts, uses this language: I quote: 'But it has never been, and in our opinion ought not to be, held that this could include the right of an individual to enter into private contracts upon all subjects, no

> matter what their nature and wholly irrespective among other things, of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of Congress upon that subject. The provision in the Constitution does not as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the states. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into these private contracts which directly and *substantially*, and not merely indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree commerce among the states.' Here is the origin of the application of that word 'substantially'."

Turning to the decision of the Supreme Court in *Addyston Pipe & Steel Co.* v. *U. S.* 175 U. S. 211, we find in addition to the quotation given by Representative Flood, other statements by the Court which serve to define the meaning of the word "substantially," as used in Section 7, *supra*, viz:

> "Under this grant of power to Congress, that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be when carried out, to directly, and not as a mere incident regulate to any *substantial* extent interstate commerce."

From these statements of Congressman Flood and those made by other members of the Senate and House during debate, it is evident that Congress, in drafting Section 7 of the Clayton Act, adopted as its guide decisions of the Supreme Court, declaring that under the Commerce Clause of the Constitution, the power of Con-

gress to legislate extended only to those matters and things *which directly and substantially—not incidentally and collaterally,—affect interstate commerce.*

The same principle was declared by the Supreme Court in the case of *U. S. v. Joint Traffic Association*, 171 U. S. 505, 567, as follows:

> "We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer, or merchant of an additional farm, manufactory or shop, or the withdrawal from busines of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of good will of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans Missouri case* as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale and was entered in for the purpose of enhancing the price at which the vendor sells his business. * * * An agreement entered into for the purpose of promoting legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such trade or commerce is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce. We also repeat what is said in the case above cited, that 'the act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, directly or remotely, some bearing upon interstate commerce, and possibly to restrain it.'"

(c) *The real effect of upholding the Commission's order herein would be to obtain for the Commission, through judicial construction, power and authority over conveyances of physical properties which the Commission requested Congress to confer by additional legislation.*

The Federal Trade Commission, in its Conference Rul-

ings appearing in its Bulletin No. 1 of January 31, 1916, gives as Conference Ruling No. 8 the following:

> "*The right of one manufacturer engaged in interstate commerce to buy out a competitor, and jurisdiction of the commission in such matters.*—On inquiry as to the right of one manufacturer to buy out a competitors in the same line of business: *Held:* That the only jurisdiction of the commission in respect of such transaction is to enforce the provision of section 7 of the Clayton Act prohibiting the acquisition by any corporation engaged, in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged, where the tendency of such acquisition may be to substantially lessen competition between such two corporations, or to restrain interstate commerce, or to create a monopoly; and also possibly to enforce section 5 of the Federal Trade Commission Act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition. *Held, also,* That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton Act or the Federal Trade Commission Act."

The members of the Federal Trade Commission sought to have the law amended so as to give the Commission jurisdiction over transactions such as the one here involved. Members of the Federal Trade Commission appeared before the Committee on the Judiciary of the House of Representatives (66th Congress) on September 8 and 9, 1919. On page 21 of Serial 5 of the hearings Mr. Victor Murdock, a member of the Federal Trade Commission, testified as follows:

> "Now, in section 7, Clayton Act, Mr. Chairman, Congress provided against a corporation's acquisition of stock in competing companies. I think at the time Congress passed that act it was a wise piece of legislation. But section 7 of the Clayton Act certainly needs strengthening now, because section 7 does not include the word 'property.' * * * But

> the Government cannot win where there is an acquisition of property instead of an acquisition of stock as the law stands to-day."

The view we urge concerning the correlation between Sections 7 and 11 of the Clayton Act is clearly and succinctly stated at page 13 of the brief of James M. Beck, solicitor general, W. H. Fuller, chief counsel, Edward L. Smith, attorney, for Federal Trade Commission, filed in U. S. Supreme Court, February 19, 1923, in successful resistance of application for certiorari, in the case of *Aluminum Company of America* v. *Federal Trade Commission*, 261 U. S. 616, as follows:

> "There is nothing in the Clayton Act which permits the Commission, when it finds a violation of Section 7 of the Clayton Act, to make any order other than one requiring the corporation which has illegally acquired stock to divest itself of such stock; and it would seem that a Circuit Court of Appeals has no right under the power of modification given to it by the act, to enter any order excepting one which requires a divestiture of the stock illegally acquired."

It is respectfully submitted that to both Sections 7 and 11 of the Clayton Act there is pertinently applicable the language of Mr. Justice McReynolds in *Margolin* v. *United States*, 269 U. S. 93, at p. 102:

> "The history of the enactment indicates plainly enough that Congress did not fail to choose apt language to express its purpose."

II.

TO CONSTRUE SAID SECTIONS 7 AND 11 AS THE FEDERAL TRADE COMMISSION HAS CONSTRUED THEM IN AND BY THE ORDER UNDER ATTACK WOULD MAKE IT NECESSARY TO CONSIDER GRAVE CONSTITUTIONAL QUESTIONS WHICH DO NOT ARISE IF SAID SECTIONS ARE CONSTRUED TO MEAN PRECISELEY AND ONLY WHAT THEY SAY.

The only provision of the Constitution which authorizes Congress to declare unlawful the acquisition and ownership of capital stock of a private corporation, or to justify a Federal Statute ordering that, in certain circumstances, the owner "divest itself of the stock held" is that contained in Article 1, Section 8 which gives Congress power "to regulate commerce."

We respectfully submit that Sections 7 and 11 of the Clayton Act, deriving their validity from the grant of power to Congress "to regulate commerce", must be interpreted to mean that they apply to and cover only situations wherein the facts, judicially ascertained and determined, show that corporate ownership of stock is so postured as to create a direct and substantial obstruction in the current of interstate commerce and which obstruction will be removed from such interstate current by change in the ownership of such stock.

In defining the limit of congressional authority to regulate commerce, this Court has drawn a clear distinction between commerce and manufacture, as well as between transactions which directly and substantially, and those which indirectly and incidentally, are related to or affect interstate commerce. The need for such distinction is imperative, for as regards most business transactions, "There would scarcely be an agreement or con-

tract among business men that could not be said to have, directly or remotely, some bearing upon interstate commerce, and possibly restrain it." *United States* v. *Joint Traffic Association*, 171 U. S. 505-557.

As Mr. Justice Holmes once remarked: "Commerce depends upon population but Congress could not, on that ground, undertake to regulate marriage and divorce." *Northern Securities Co.* v. *U. S.* 193 U. S. 402.

We are not here dealing with property of an interstate character, such as that involved in the *Northern Securities Case*, *supra*, where Mr. Justice Harlan said:

> "Railroad companies, we said in the *Trans-Missouri Freight Association case*, 'Are instruments of commerce and their *business is commerce itself*,' and such companies, it must be remembered, operate public highways, established primarily for the convenience of the people, and are, therefore, subject to governmental control and regulation. * * * When such carriers, in the exercise of public franchises, engage in the transportation of passengers and freight among the States, they become—even if they be State corporations—subject to such rules as Congress may lawfully establish for the conduct of interstate commerce."

The business of the packer is not affected with a public interest or impressed with a public use. That business stands before the law affected by exactly the same considerations as does the business of any other ordinary manufacturer.

In *Chas. Wolff Packing Company* v. *Court of Industrial Relations of the State of Kansas*, 262 U. S. 522, the validity of the Court of Industrial Relations Act of Kansas was before the Court.

This act among other things declared:

> "the following to be affected with a public interest: First, manufacture and preparation of food for human consumption; * * *"

Counsel for the State in his argument before this Court contended:

> "Many millions of our people are wholly dependent upon the continuous and efficient operation of the packing industry for their daily ration of meat. Millions of live-stock growers are dependent upon the continuous and efficient operation of the same industry, for a market for their live stock. All this has impressed with a public interest the packing industry. * * * *The packing industry is affected with a public interest. It has been made the subject of congressional action as evidenced by the Packers and Stockyards Act* of 1921. *Stafford* v. *Wallace*, 258 U. S. 495." (527)

In passing upon this question the court, by Mr. Chief Justice Taft, said (p. 536):

> "It is urged upon us that the declaration of the legislature that the business of food preparation is affected with a public interest and devoted to a public use should be most persuasive with the court and that nothing but the clearest reason to the contrary will prevail with the court to hold otherwise. (Citing cases.) * * *
>
> It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation * * * (537).
>
> An ordinary producer, manufacturer or shopkeeper may sell or not sell as he likes, *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 320; *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 256, and while this feature does not necessarily exclude businesses from the class clothed with a public interest, *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, it usually distinguishes private from quasi-private occupations.
>
> In nearly all the businesses included under the third head above, the thing which gave the public interest was the indispensable nature of the service

and the exorbitant charges and arbitrary control to which the public might be subjected without regulation.

In the preparation of food, the changed conditions have greatly increased the capacity for treating the raw product and transferred the work from the shop with few employees to the great plant with many. Such regulation of it as there has been, has been directed toward the health of the workers in congested masses, or has consisted of inspection and supervision with a view to the health of the public. But never has regulation of food preparation been extended to fixing wages or the prices to the public, as in the cases cited above where fear of monopoly prompted, and was held to justify, regulation of rates. There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply in Kansas are country wide, a short supply is not likely, and the danger from local monopolistic control less than ever." (538)

The late Chief Justice White, in his dissenting opinion, in the *Northern Securities case, supra*, stated that the issue there involved was whether Congress has the power to regulate and control the acquisition and ownership of stock in two competing railroad companies. Answering such issue, he demonstrated most forcibly and clearly, the proposition that the ownership of property is not embraced within the constitutional power of Congress to regulate commerce, saying:

"I shall not stop to review a multitude of decisions of this court concerning interstate commerce, which, whilst upholding the paramount authority of Congress over that subject, at the same time treated it as elementary, that the effect of the power over commerce beween the States was not to deprive the States of their right to legislate concerning the ownership of property of every character, or to create

> railroad corporations and to endow them with such powers as were deemed appropriate, or to deprive the individual of his freedom to acquire, own, and enjoy property by descent, contract, or otherwise, because railroads or other property might become the subject of interstate commerce."

The majority of the court do not differ from the late Chief Justice White on this point, but were of the opinion that the mere acquisition and ownership of stock was not the substantial issue involved, as is shown by Justice Harlan's statement:

> "It is said that whatever may be the power of a State over such subjects, Congress cannot forbid single individuals from disposing of their stock in a State corporation, even if such corporation be engaged in interstate and international commerce; that the holding or purchase by another corporation, for whatever purpose are matters in respect of which Congress has no authority under the Constitution; that, so far as the power of Congress is concerned, citizens or State corporations may dispose of their property and invest their money in any way they choose; and that in regard to all such matters citizens and State corporations are subject, if to any authority, only to the lawful authority of the State in which such citizens reside or under whose laws such corporations are organized. It is unnecessary in this case to consider such abstract, general questions. The Court need not now concern itself with them. They are not here to be examined and determined, and may well be left for consideration in some case necessarily involving their determination. • • • We do not understand that the Government makes any such contentions or takes any such positions as those statements imply. *It does not contend that Congress may control the mere acquisition or the mere ownership of stock in a State corporation engaged in interstate commerce.*" (Italics ours.)

It may be well to note incidentally, that the above quotation was cited by Senator Borah in the debates upon

the Clayton Act, as showing the extent of congressional power over the acquisition and ownership of stock in private corporations. See Congressional Record, September 30, 1914, p. 15953.

To construe the Clayton Act as a Federal attempt to reach and regulate mere stock ownership save in the event where such stock ownership is directly and substantially affecting interstate commerce, would render the Act unconstitutional, because, in the language of Chief Justice White in the *Standard Oil case* (221 U. S. 1, 68), "to do so would extend the power of Congress to subjects *dehors* the reach of its authority to regulate commerce."

In *Adair v. United States*, 208 U. S. 161, 178, the court speaking through Mr. Justice Harlan, said:

> "Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated."

To support the decree in the *Northern Securities case*, the Government recognized that it was essential to show that the transactions there under attack directly and substantially affected interstate commerce. In the brief of Mr. Attorney General Knox as summarized at pp. 297-317 of 193 U. S., the following statements are made concerning the scope of the control of interstate commerce given to Congress by the Constitution:

> "Of course, it makes no difference whether the obstruction be physical or economic—whether it be a sand bar, a mob or a monopoly—whether it result from the sinking of a vessel, or the stifling of competition—the power of Congress to remove it is the same in each case." (306)
>
> "The combination and monopoly charged by the United States operate directly on interstate com-

merce and do not affect it only indirectly, incidentally or remotely." (315)

It is respectfully submitted that only by giving to Section 7 the interpretation for which we contend can this section be saved from constitutional infirmity. Under our interpretation Congress legislates in pursuance of its constitutional power to prevent and remove a specific *trade practice* which had been found to directly and injuriously affect commerce by means of "the operation of bogus independent companies." From *Gibbons* v. *Ogden*, 9 Wheat. 1 (197), forward, there has never been departure from the rule that the power of Congress over interstate commerce has been construed to extend to and to be limited to (a) the regulation of such commerce itself; and (b), the regulation of the instrumentalities by which such commerce is conducted.

Mere stock ownership is not and cannot be commerce, nor an instrumentality of commerce. Therefore, as a condition precedent to any Federal legislation touching stock ownership, there must exist a situation where such ownership is a direct obstruction in the channels of commerce. Stock ownership had been the means sometimes utilized to interpose such a direct obstruction in the channel of free, normal and competitive trade—*i. e.*, by "the operation of bogus independent companies" (*Standard Oil Co.* v. *United States*, 221 U. S. 1, 43). And Sections 7 and 11, as we respectfully submit, in plan, specifications and details, are merely and clearly the Congressional machinery designed and limited to the removal, in a specified manner, of a specified intercorporate device which experience had shown to be directly obstructive to the free flow of commerce.

In the *First Employers' Liability Cases*, 207 U. S. 463, wherein the original Federal Employers' Liability Act

was declared unconstitutional because of the mistaken assumption by Congress that the constitutional grant to regulate interstate commerce was plenary to regulate all the affairs of common carriers engaged in interstate commerce, Mr. Justice White said (497):

> "From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the states, etc., and does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form, *the statute is addressed to the individuals or corporations who are engaged in interstate commerce and is not confined solely to regulating the interstate commerce business which such persons may do*—that is, it regulates the persons because they engage in interstate commerce and *does not alone regulate the business of interstate commerce.*" (Italics ours.)

In *Federal Trade Commission* v. *American Tobacco Co.* 264 U. S. 298, Mr. Justice Holmes said (305):

> "The mere facts of carrying on a commerce not confined within state lines and of being organized as a corporation do not make men's affairs public, as those of a railroad company now may be. *Smith* v. *Interstate Commerce Commission*, 245 U. S. 33, 43."

Under the Fifth Amendment, "Liberty" comprehends substantially all those civil rights, including equality of treatment under the law and security against arbitrary discriminations between citizens similarly situated which are placed beyond the power of State legislation by the Fourteenth Amendment.

These principles are so firmly established that we deem it unnecessary to do more than refer to some of the leading cases.

See:

Slaughter House cases, 16 Wall. 36, 127.
United States v. *Cruikshank*, 92 U. S. 542, 554.
Allgeyer v. *Louisiana*, 165 U. S. 578.
Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211, 228.
Cotting v. *Kansas City Stockyards*, 183 U. S. 79.
Coppage v. *Kansas*, 236 U. S. 1, 10, 14.
New York Life Ins. Co. v. *Dodge*, 246 U. S. 357, 373, 374.
Adkins v. *Chlidrens' Hopsital*, 261 U. S. 525, 544.

"The capability of being transferred is the quintessence of property." Vol. 22, Encyclopedia Americana, p. 660, Title "Laws of Property."

In *Holden* v. *Hardy*, 169 U. S. 366, it is said (p. 391):

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that, as property can only be legally acquired as between living persons by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid."

It has been heretofore pointed out that when the petition was filed herein on November 24, 1919, it affirmatively appeared that there had been sale and transfer, by deed and bill of sale, of all the assets of both Moultrie Packing Company and of Andalusia Packing Company "including the plants, fixtures, machinery and good will" of both said companies, and that for a period of about two years Swift & Company had operated both

said plants and both said businesses as plants and business of Swift & Company, and was so operating the same at the time of the filing of the complaint. (Rec., 8, 10, 51.)

In its findings as to the facts, the Commission found that at a stockholders' meeting of January 5, 1918, "said Moultrie Packing Company was ordered wound up and liquidated and its assets distributed" (Rec., 102); "that, by a certain deed in writing, and a certain other instrument in writing, both dated March 30, 1918, said Andalusia Packing Company, through its president, T. H. Ingwersen, and its secretary, C. A. Peacock, transferred to respondent, Swift & Company, respectively, the real estate at Andalusia, Alabama, of said Andalusia Packing Company, and the business and physical assets of said Andalusia Packing Company, wherever situated." (Rec., 108.)

In other words, it affirmatively and without contradiction appears that long prior to the filing of the complaint, the *stock* of Moultrie Packing Company and of Andalusia Packing Company—the *res* which must directly and substantially obstruct interstate commerce before the Commission can constitutionally acquire jurisdiction under Sections 7 and 11—had parted with all interest in or control over plant, business, and physical assets, *i. e.*, over each and all the instrumentalities of commerce—so that "the use of such stock by the voting or granting of proxies or otherwise" (Sec. 7) could by no possibility directly and substantially affect interstate commerce in which said Moultrie Packing Company and Andalusia Packing Company were no longer engaged and in which they were without instrumentalities to engage.

The Commission by its order assumed that this ad-

ministrative agency possesses power even broader and more comprehensive than the courts of equity of the United States were willing to assume in carrying into effect the purpose of the Anti-Trust Laws. The position of the Commission as to its power under Section 7 bears startling resemblance to the position which this Court was asked to take in enforcing the Sherman Act.

In *U. S. v. U. S. Steel Corporation*, 251 U. S. 417, it is said at page 452:

> "The Steel Corporation by its formation united under one control competing companies and thus, it is urged, a condition was brought about in violation of the statute, and therefore illegal and became a 'continually operating force, with the possession of power unlawfully obtained.' "

But in disposing of this contention it was held, as stated in paragraph nine of the summary (418):

> "In commanding the courts to 'prevent and restrain violations' of it, the Anti Trust Law has regard to conditions as they may exist when relief is invoked and to the usual powers of a court of equity to adapt its remedies to those conditions."

Hitherto no one has ever claimed for the Federal Trade Commission power comparable with the powers of courts of equity. Mr. Justice Brandeis dissented from the decision of the Supreme Court in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, which annulled an order of the Commission. In his dissenting opinion Mr. Justice Brandeis said (p. 432):

> "The proceeding is not punitive. The complaint is not made with a view to subjecting the respondents to any form of punishment. It is not remedial. The complaint is not filed with a view to affording compensation for any injury alleged to have resulted from the matter charged, nor with a view to protecting individuals from any such injury in the future. The proceeding is strictly a preventive

measure taken in the interest of the general public. * * *" (434)

"In undertaking to regulate competition through the Trade Commission Congress (besides resorting to administrative as distinguished from judicial machinery) departed in two important respects from the methods and measures theretofore applied in dealing with trusts and restraints of trade:

(1) Instead of attempting to inflict punishment for having done prohibited acts, instead of enjoining the continuance of prohibited combinations and compelling disintegration of those formed in violation of law, the act undertook to preserve competition through supervisory action of the Commission. The potency of accomplished facts had already been demonstrated. The task of the Commission was to protect competitive business from *further* inroads by monopoly. * * * Its action was to be prophylactic. Its purpose in respect to restraints of trade was prevention of diseased business conditions, not cure."

In *Eastman Kodak Company* v. *Federal Trade Commission*, 7 F. (2nd) 994, (certiorari granted 46 Sup. Ct. Rep. 102), the Circuit Court of Appeals of the Second Circuit said at page 996:

"The Commission is not a court; it exercises administrative, not judicial power (*National Harness, etc. Ass'n.* v. *Federal Trade Commission* (C. C. A.) 268 F. 705; *Chamber of Commerce* v. *Federal Commission* (C. C. A.) 280 F. 45), and no statutory grant can be found justifying the order that a citizen sell property acquired in the course of business."

In *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, the Circuit Court of Appeals for the 8th Circuit said, at page 683:

"The Federal Trade Commission is no part of the judicial system of the United States. It does not exercise judicial powers. It is an administrative body created by statute. It has only such duties

and powers, as are given it, by expression or fair implication therefrom, by statute."

(685):

"As the orders of the Commission are purely remedial and preventative, the effect thereof is entirely in the future. Therefore, the jurisdiction of the Commission should, in this respect, be measured as of the time of the order rather than as of the filing of the complaint or as of the hearing thereon."

Is it conceivable that the validity of the title acquired by Swift & Company through the deeds and bills of sale to it covering the Moultrie and Andalusia plants can in any manner depend upon or be affected by the question whether the Legal Department of Swift & Company or the Legal Department of vendors was the instrumentality availed of to work out the details of the conveyances? Is it conceivable that Section 7 can be construed, and if so construed can be upheld, as meaning that the Federal Trade Commission has power and jurisdiction to deal with and set aside the conveyance of physical assets because of the posture of intercorporate stockholding (legal and/or equitable) at the time of such conveyance, the Commission admittedly having no such jurisdiction in case the identical conveyances covering the identical property had an individual grantor or grantee?

May Congress constitutionally forbid a corporation from openly acquiring, through ownership of all the stock of a corporate competitor, the going business of such competitor, under circumstances wherein the transaction would be inoffensive to the law if either seller or buyer, or both, were individuals—the respective positions in the trade, and the instrumentalities used in commerce of the respective corporate and individual vendors and vendees being precisely the same—*i. e.*, may the law

forbid to corporations, solely because they are corporations, what it permits to individuals in identical circumstances?

In *Kentucky Co.* v. *Paramount Exchange*, 262 U. S. 544, wherein the Supreme Court held unconstitutional a Wisconsin statute which imposed on litigants who were nonresident corporations different burdens than were imposed on nonresident individuals, Mr. Justice Van Devanter said (551):

> "No doubt a corporation of one state seeking relief in the courts of another must conform to the prevailing modes of proceeding in those courts and submit to reasonable rules respecting the payment of costs or giving security therefor and the like (see *Canadian Northern Ry. Co.* v. *Eggen*, 252 U. S. 553, 561); but it cannot be subjected, merely because it is such a corporation, to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations. *Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin,—a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary.* There could be no reason for requiring a corporate resident of Louisville to send its secretary, papers, files and books to Milwaukee for the purpose of an adversary examination that would not apply equally to an individual resident of Louisville in a like case." (Italics ours.)

In *Southern Bell Telephone & Telegraph Co.* v. *Town of Calhoun*, 287 Fed. 381, District Judge Watkins said (387):

> "It is especially held that power to enact special legislation cannot be based upon the mere fact that the thing affected is a corporation, even when the Legislature has power to alter, amend, or repeal the charter thereof. This power does not extend to the taking of the property of the corporation by

confiscation, or indirectly by other means, nor to the right to deny such corporation the equal protection of the laws. *Lake Shore, etc. Railway Company* v. *Smith*, 173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858."

In *Society of Sisters of the Holy Names* v. *Pierce*, 296 Fed. 928, three Federal judges, in declaring unconstitutional the Oregon statute which required children of certain ages to attend public schools, said (931):

> "Without refining as to the precise political rights that corporations, whether civil, religious, or educational, have and possess, and of right may assert and maintain, in this country, it is sufficient to say that it has been recognized by ample authority that, while not possessing the rights of citizens under the privileges, and immunities clause of the Fourteenth Amendment to the Constitution (*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, 45, 20 Sup. Ct. 518, 44 L. Ed. 657), they do have the guaranty, along with citizens, that they shall not be deprived of their property without due process of law nor be denied the equal protection of the laws (*Smyth* v. *Ames*, 169 U. S. 466, 526, 18 Sup. Ct. 418, 42 L. Ed. 819); *Covington etc. Turnpike Co.* v. *Sanford*, 164 U. S. 578, 592, 17 Sup. Ct. 198, 41 L. Ed. 560; *Gulf, Colorado & Santa Fe Railway Co.* v. *Ellis*, 165 U. S. 150, 154, 17 Sup. Ct. 255, 41 L. Ed. 666; *Southern Railway Co.* v. *Greene*, 216 U. S. 400, 416, 30 Sup. Ct. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247."

When this case reached this Court (268 U. S. 510) the decrees below were affirmed and it was said (535):

> "Appellees are corporations and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. *Northwestern Life Ins. Co.* v. *Riggs*, 203 U. S. 243, 255; *Western Turf Associaiton* v. *Greenberg*, 204 U. S. 359, 363. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened

by such action. *Truax* v. *Raich*, 239 U. S. 33; *Truax* v. *Corrigan*, 257 U. S. 312; *Terrace* v. *Thompson*, 263 U. S. 197."

In *Truax* v. *Corrigan*, 257 U. S. 312, Mr. Chief Justice Taft said (337, 338):

"Classification must be reasonable. As was said in *Gulf, Colorado & Santa Fe Ry. Co.* v. *Ellis*, 165 U. S. 155, classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect of which the classification is proposed, and can never be made arbitrarily and without such basis.' As was said in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 293; 'The rule (*i. e.*, of the equality clause) is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations.' The same principle is repeated and enforced in *Southern Ry. Co.* v. *Greene*, 216 U. S. 400, 417: 'While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based on some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis.' Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things, and persons, and class them in accordance with their pertinence to the purpose in hand. Classification like the one with which we are here dealing is said to be the development of the philosophic thought of the world and is opening the door to legalized experiment. When fundamental rights are thus attempted to be taken away, however, we may well subject such experiment to attentive judgment. The Constitution was intended, its very purpose was, to prevent experimentation with the fundamental

rights of the individual. We said through Mr. Justice Brewer, in *Muller* v. *Oregon*, 208 U. S. 412, that 'it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking.' "

In *Cotting* v. *Kansas City Stockyards Co.*, 183 U. S. 79, Mr. Justice Brewer said (111-112):

"It would practicaly defeat legislation if it was laid down as a rule that a statute was necessarily adjudged invalid if it did not bring all within its scope or subject all to the same burdens. It would strip the Legislature of its inherent power to determine generally what is for the general interests, which interests may often be promoted by certain regulations affecting one class which do not affect another—certain burdens imposed on one which do not rest upon another.

But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the law is guaranteed, and that *such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other.* * * * *This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business*, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would." (Italics ours.)

In *A. T. & S. F. Co.* v. *Vosburg*, 238 U. S. 56, Mr. Justice Pitney said (59):

> "The constitutional guaranty entitled all persons and corporations within the jurisdiction of the state to the protection of equal laws, in this as in other departments of legislation. It does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation."

III.

THE CLAIM BY AND FOR THE FEDERAL TRADE COMMISSION THAT SUCH COMMISSION HAS IMPLIED JUDICIAL POWER IS WITHOUT FOUNDATION.

So long as we keep in mind the fundamentals guaranteed by the Constitution,

(A) *That an administrative agency of Congress cannot be given judicial power;*

(B) *That discriminations between corporations and individuals, in Federal Legislation based upon the Commerce Clause, must be founded on some real difference in the manner by which corporations and individuals affect interstate commerce; and*

(C) *That Federal power to legislate under the Commerce Clause exists only if and when legislation reaches matters, subjects, and things which directly—not incidentally and collaterally—affect and thus regulate interstate commerce,*

We have no difficulty in so interpreting sections 7 and 11 of the Clayton Act as to preserve them from constitutional objection. And these sections can be thus preserved only by rejecting the Commission's conception of its power, as evidenced by the order herein, because such conception is obliv-ious of constitutional guarantees.

When the Clayton Act was passed, Congress had no illusions that an administrative agency of Congress

could constitutionally be given power to interject itself into the commercial world in any circumstances except when interstate commerce was "diretly and substantially and not merely indirectly, remotely, incidentally and collaterally" affected. The limitation upon the power of Congress under the Commerce Clause had been theretofore thus defined in the *Addyston Pipe Case*, 175 U. S. 229, in clear and unmistakable terms, as shown by the following excerpts from said opinion (228):

> "Under this grant of power to Congress, that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate commerce. • • •
>
> (229) The provision in the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the states. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree commerce among the states. • • •
>
> "(234) Where the contract affects interstate commerce only incidentally and not directly, the fact that it was not designed or intended to affect such commerce is simply an additional reason for holding the contract valid and not touched by the act of Congress. • • •
>
> "(246) It is almost needless to add that we do not hold that every private enterprise which may be

carried on chiefly or in part by means of interstate shipments is theretofore to be regarded as so related to interstate commerce as to come within the regulating power of Congress."

As heretofore pointed out, the draftsmen of the Clayton Act found in the decision of the Supreme Court in the *Addyston Pipe Case* "the origin of the application of the words 'substantially.' "

In *Rigney* v. *City of Chicago*, 102 Ill. 64, Mr. Justice Mulkey said (77):

"Property, in its appropriate sense, means that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects, and generally to the exclusion of all others, and doubtless this is substantially the sense in which it is used in the Constitution."

In his dissenting opinion in the *Pipe Line Cases*, 234 U. S. 548, Mr. Justice McKenna said (571):

"The conception of property is exclusiveness, the rights of exclusive possession, enjoyment and disposition. Take away these rights and you take all that there is of property."

In *Moore* v. *New York Cotton Exchange*, 296 Fed. 61, wherein the plaintiff sought relief in equity under the Sherman Act and Section 16 of the Clayton Act, the Circuit Court of Appeals of the Second Circuit, speaking through Circuit Judge Rogers, said (66):

"And the right to acquire property is as much entitled to protection as the right to protect property already acquired. *International News Service* v. *Associated Press*, 248 U. S. 215, 236."

He further stated (68):

"As construed by the Supreme Court in the cases cited and in those about to be cited, the Sherman Act is not construed as forbidding or restraining the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish

such purpose. And see *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 33 Sup. Ct. 53, 57 L. Ed. 124; *United States* v. *Reading Co.*, 226 U. S. 324, 33 Sup. Ct. 90, 57 L. Ed. 243; *Nash* v. *United States*, 229 U. S. 373, 33 Sup. Ct. 790, 57 L. Ed. 1232; *Eastern States Lumber Association* v. *United States*, 234 U. S. 600, 34 Sup. Ct. 951, 58 L. Ed. 1490, L. R. A. 1915A, 788.

The cases disclose that where the facts clearly show that the purpose of a contract is not to regulate, obstruct, or restrain interstate commerce, but that the object is properly and fairly to regulate the transaction of the business in which the parties to it are engaged, the agreement will be upheld as not within the statute. The contract is good if 'it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object.' *Anderson* v. *United States*, 171 U. S. 604, 19 Sup. Ct. 50, 43 L. Ed. 300."

The decree entered in the case last cited was affirmed by this Court on April 12, 1926, as reported in 46 Sup. Court Reporter 367. This Court said (369):

"The effect of the making and execution of the contract upon interstate trade or commerce, if any, is indirect and incidental. Neither in purpose nor effect does it directly or unreasonably restrain such commerce or operate to create a monopoly."

The first important case under the Federal Anti-Trust Act was *In re Greene*, 52 Fed. 104. In that case Circuit Judge Jackson, afterward Mr. Justice Jackson, said (115):

"It is very certain that *Congress could not*, and did not, by this enactment, attempt to prescribe limitations to the acquisition, either by the private citizen or state corporation, of property which might become the subject of interstate commerce." (Italics ours.)

In *Hopkins* v. *United States*, 171 U. S. 578, 592, 594, Mr. Justice Peckham said:

> "There must be some direct and immediate effect upon interstate commerce in order to come within the act. * * * An agreement may in a variety of ways affect interstate commerce just as state legislation may, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct."

In *United States* v. *Joint Traffic Association*, 171 U. S. 505, Mr. Justice Peckham says (567):

> "Nevertheless, we might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.
>
> We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a good will of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans-Missouri case* as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale and was entered into for the purpose of enhancing the price at which the vendor sells his business. The instances cited by counsel have in our judgment little or no bearing upon the question under consideration. In *Hopkins* v. *United States*, decided at this term, post 578, we say that the statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would

enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

In *Cincinnati Packet Co.* v. *Bay,* 200 U. S. 179, Mr. Justice Holmes says, at pages 184, 185:

"By these words the covenant not to do business between Cincinnati and Portsmouth for five years is imported into the sale of the ships, and made one of the conventional inducements of the purchase. The price is paid not for the vessels alone but for the vessels with the covenant. So, still more clearly, the parallel installments for five years are paid for the covenant, at least in part. It is said that there is no sale of good will. But the covenant makes the sale. Presumably all that there was to sell, beside certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.

This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the Act of July 2, 1890, there has been no intimation from any one, we believe, that such a contract made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290, 329, *United States* v. *Joint Traffic Association,* 171 U. S. 505, 568, and it was so decided in the case of a patent. *Bement* v. *National Harrow Co.,* 186 U. S. 70, 92."

In *Adair* v. *United States,* 208 U. S. 161, Mr. Justice Harlan said (178):

"Manifestly, any rule prescribed for the conduct

of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated."

In *United Leather W. I. U.* v. *Herkert & Meisel Trunk Co.*, 284 Fed. 446, the Circuit Court of Appeals of the 8th Circuit, speaking through Judge Sanborn, said (464):

> "This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or *individual acts which affect interstate commerce incidentally* are to be distinguished from those which affect it directly. The former *are without*, the latter are within, *national control. United Mine Workers* v. *Coronado Coal Co., supra; U. S.* v. *Patten*, 226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (N. S.), 325; *Ware & Leland* v. *Mobile County*, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031; *Hooper* v. *California*, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297; *Leloup* v. *Mobile*, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311; and many other cases." (Italics ours.)

The case last cited involved an alleged interference with interstate commerce in leather goods and trunks by reason of a strike to enforce demands that certain shops be unionized. When the case reached this Court (*United Leather Workers* v. *Herkert*, 265 U. S. 457) in the opinon by Mr. Chief Justice Taft it was said (471):

> "This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control

its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."

In *Child Labor Tax Case*, 259 U. S. 20, the court, speaking through Mr. Chief Justice Taft, said (39):

> "The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax, and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state in order to coerce them into compliance with Congress's regulation of state concerns, the court said this was not in fact regulation of interstate commerce, but rather that of state concerns and was invalid. So here the so-called tax is a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the Federal Constitution."

In *National League* v. *Federal Baseball League*, 269 Fed. 681, the Circuit Court of Appeals of the District of Columbia, said (686):

> "The statute does not apply 'where the trade or commerce affected is interstate unless the effect thereon is direct, not merely indirect.' *United States* v. *Patten*, 226 U. S. 525, 542, 33 Sup. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. (N. S.), 325). If the necessary effect is but incidentally or indirectly to restrict the commerce, 'while its chief result is to foster the trade and increase the business of those who make and operate it, it is not violative of this law.'" (Citing many cases.)

This decision was affirmed by this Court in 259 U. S. 200. Mr. Justice Holmes said (208) that "the decision of the Court of Appeals went to the root of the case and if correct makes it unnecessary to consider other seri-

ous difficulties in the way of the plaintiff's recovery," and that (209) the matters "charged against the defendants were not an interference with commerce among the states."

In *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, Mr. Chief Justice Taft said concerning the power to regulate commerce which the Constitution grants to Congress, (478):

> "To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety. *The Daniel Ball*, 10 Wall, 557, 564, 19 L. Ed. 999; *County of Mobile* v. *Kimbell*, 102 U. S. 691, 696, 697, 26 L. Ed. 238; *California* v. *Pacific Railroad Co.*, 127 U. S. 1, 39, 8 Sup. Ct. 1073, 32 L. Ed. 150; *Wilson* v. *Shaw*, 204 U. S. 24, 33, 27 Sup. Ct. 233, 51 L. Ed. 351; *Second Employers' Liability Cases*, 223 U. S. 1, 47, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.), 44; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529, 14. Sup. Ct. 891, 38 L. Ed. 808."

It is respectfully submitted that the Clayton Act must be construed as intending thus "to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety."

As thus construed the purpose of the Clayton Act was to arrest, by specific directions to an administrative agency, certain practices theretofore found, in certain circumstances, to have been efficient in obstructing the channel of interstate commerce. Accordingly Congress specified in the Clayton Act most of the practices enumerated by Chief Justice White in the *Standard Oil case*, 221 U. S. 1 (41-43) as means or devices by which the defendant in that case had sought to restrain trade and

attain monopoly. In such enumeration the Chief Justice sets forth the holding company (p. 41) and "the operation of bogus independent companies" (p. 43); and our contention is that Section 7 legislated specifically against the "holding company" and the "bogus independent" and Section 11 set up as the single, exclusive writ of execution against this practice an order that a corporation which restrained interstate commerce through stock ownership "divest itself of the stock held."

It is further respectfully submitted that Sections 7 and 11 (although applicable only to corporations) are not arbitrarily and therefore unconstitutionally discriminatory if they be interpreted as dealing *in rem* with the specific evil of *intercorporate stockholding* and as providing the specific remedy of divestiture of stock. This for the reason that "Holding Companies" had been found (*Standard Oil case*, 221 U. S. 1, at pages 41-43) to be one of the means or devices resorted to in efforts to attain monopoly or restrain trade and it was within the power of Congress to prescribe a form of regulatory order against this *purely intercorporate* practice. However, said sections would be wholly arbitrary and therefore unconstitutional if they be interpreted to mean that the owner of plant A (if such owner be an individual) may buy and operate the physical properties and assets of plant B, but that the owner of the same plant A (if such owner be a corporation) may not buy or operate the identical physical properties and assets of the same plant B.

It is further respectfully submitted that the question of the right "to hold, own, control and/or operate properties, physical assets and businesses"—whether illegally obstructive of the channel of interstate commerce—

is a question which Congress has committed exclusively to courts of equity under Section 4 of the Sherman Act (26 Stat. 209), which is applicable alike to corporations and individuals by the specific language of Section 8 which says (26 Stat. 210):

> "The word 'person', or 'persons', wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The question of the legality, under federal anti-trust laws, of ownership (whether corporate or individual) of physical property is to be determined, as we respectfully submit, by "proceedings in equity" to be instituted "under the direction of the Attorney General" and by the entry by a federal court of equity of such "order or prohibition as shall be deemed just in the premises." (See Sec. 4, Sherman Act—26 Stat. 209.) Construction of Section 11 as conferring on the Federal Trade Commission the power of retrospective relief, *i. e.*, the setting aside of deeds and bills of sale, would raise the grave question whether this was not an unconstitutional endowment of an administrative agency of Congress with judicial power.

To all amendments by Congress under the Commerce Clause the Courts have always attributed to Congress an intent "to regulate in the sense intended" (*Dayton-Goose Creek Ry. Co.*, v. *U. S.*, 263 U. S. 456) that is "an intent to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned as well as the public at large, and to protect its growth and insure its safety."

This Court said in *Standard Oil Company* v. *United States*, 221 U. S. 78, and reiterated in *United States* v.

St. Louis Terminal Railroad Company, 224 U. S. 409, that "the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of trade and commerce, is the foundation upon which the prohibitions of the statute rest, and moreover, that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property."

And "The Clayton Act, as its title and the history of its enactment discloses, was intended to supplement the purpose and effect of other anti-trust legislation, principally the Sherman Act of 1890." (*Standard Fashion Co.* v. *Magrane-Houston Co.,* 258 U. S. 346, 355.)

Under the evidence in this case, it is clear that if the order of the Commission is sustained by this Honorable Court, none of the following named can be considered a beneficiary:

(a) The citizens of Moultrie and Andalusia and adjacent communities will not be benefited; they are satisfied with the existing status and have said so.

(b) The farmers and live stock raisers are satisfied and have said so.

(c) The retail dealers are satisfied and say that the product put out by these plants is now more desirable from a "market man's standpoint" than was the product of the old companies.

(d) The public has every opportunity to purchase its meat in a market regulated only by the laws of supply and demand, functioning through full and free competition, each dealer striving to give the maximum of quality and service.

In the situation thus disclosed by the evidence herein there is pertinently applicable the statement of Mr. Justice McKenna in the *Steel case* (*U. S.* v. *U. S. Steel Corporation,* 251 U. S. 417, 451).

In this case the court said (page 451):

> "The corporation was formed in 1901; no act of aggression upon its competitors is charged against it; it confederated with them at times in offense against the law, but abandoned that before this suit was brought, and since 1911 no act in violation of law can be established against it except its existence be such an act. This is urged, as we have seen, and that the interest of the public is involved, and that such interest is paramount to corporation or competitors. Granted,—though it is difficult to see how there can be restraint of trade when there is no restraint of competitors in the trade nor complaints by customers,—how can it be worked out of the situation and through what proposition of law?"

On page 457 the court said:

> "In conclusion, we are unable to see that the public interests will be served by yielding to the contention of the Government respecting the dissolution of the company or the separation from it of some of its subsidiaries; and we do see in a contrary conclusion a risk of injury to the public interest, including a material disturbance of, and, it may be, serious detriment to, the foreign trade. And in submission to the policy of the law and its fortifying prohibitions the public interest is of paramount regard."

Likewise applicable is the statement of Judge Lacombe, speaking for four Circuit Judges in disposing of proceedings brought under the Sherman Act, reported as *United States* v. *Prince Line et al*, and *United States* v. *American-Asiatic S. S. Co. et al.*, 220 Fed. 230, 235:

> "No ship owner, no shipper or consignee, no manufacturer, merchant, or trader, large or small, in the United States or in the Far East, is here with any complaint. Persons engaged in the trade which, it is alleged, is restrained, sit mute; every one seems to be reasonably well satisfied with existing conditions except the government, which contends that the agreements themselves carried out according to their terms constitute a violation of the act, *i. e.*, (as it is now construed), that they evidence an 'un-

> reasonable restraint of trade.' * * * When from carriers and former carriers and prospective carriers of merchandise between the specified ports, and from persons interested in the manufacture, transportation, sale, and purchase of such merchandise, there comes no complaint, it seems a fair inference that whatever restraints may have resulted from defendant's combination and conduct are merely the usual, normal, and reasonable restraints against which it has been held the Sherman Act is not directed."

In *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774, (certiorari denied 262 U. S. 759), it was said (781):

> "In *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 312, 169 C. C. A. 323, 328 (6 A. L. R. 358), the Circuit Court of Appeals in the Seventh Circuit declared in speaking of the Federal Trade Commission Act of September 26, 1914, 38 St. 717, c. 311:
>
> 'We find in the statute no intent on the part of Congress, even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away."

Conclusion

It is respectfully submitted that the order of the Circuit Court of Appeals should be reversed; and inasmuch as "from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay" (*Fed. Trade Commission* v. *Curtis Pub. Co.*, 260 U. S. 580), such reversal should carry with it directions to set aside the order of the Federal Trade Commission.

All of which is respectfully submitted.

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James M. Sheean,
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Counsel for Petitioner.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1926

No. 231

SWIFT & COMPANY,
Petitioner,
vs.
FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY TO BRIEF FOR RESPONDENT.

ALBERT H. AND HENRY VEEDER,
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FRANK L. HORTON,
Counsel for Petitioner.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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REPLY TO BRIEF FOR RESPONDENT.

I.

PETITIONER HAS NEVER ASSERTED THAT ANY CONSTITUTIONAL QUESTION IS PRESENTED SO LONG AS SECTIONS 7 AND 11 ARE CONSTRUED TO MEAN PRECISELY AND ONLY WHAT THEY SAY.

The brief for respondent mistakenly assumes that petitioner herein asserts that either Section 7 or Section 11 of the Clayton Act is unconstitutional. Quite upon the contrary we have urged throughout this case that

no constitutional question arises if Sections 7 and 11 are construed to mean precisely and only what they say. We have never contended that Sections 7 and 11 by their language or their purpose (as elucidated by the congressional debates) or by the making and enforcement of the statutory order in the form specified in Section 11 requiring a company which held the stock of a competitor to "divest itself of the stock held" violated any constitutional right of corporations.

Our contention was and is that Sections 7 and 11 (although applicable only to corporations) are not arbitrarily and therefore unconstitutionally discriminatory in case the order entered follows the language of Section 11. This for the reason that intercorporate stockholding in such position that the effect thereof "may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition" had been found (*Standard Oil Company* v. *U. S.* 221 U. S. 1, at pages 41-43) to be one of the "unfair methods of competition" resorted to in efforts to attain monopoly or restrain trade; that this specific *trade practice*, as well as price discriminations covered by Section 2, exclusive and tying contracts covered by Section 3, and interlocking directorates covered by Section 8 were dealt with by the act and that the intention of Congress thus to deal with specific trade practices was clearly stated in the language of the Committee on Judiciary submitting the bill to Congress (Report No. 698, 63rd Congress, Second Session, July 22, 1914) as follows:

> "Broadly stated, the bill, in its treatment of unlawful restraints and monopolies, seeks to prohibit and make unlawful certain trade practices which, as a rule, singly and in themselves, are not covered by the Act of July 2, 1890, or other existing antitrust acts."

Our contention was and is that Congress provided by Section 11 as the single, exclusive writ of execution against the practice prohibited by Section 7 (purely intercorporate) a prescribed form of regulatory or corrective order, viz., that the corporation found to be restraining the free play of the competitive activities of its purported or ostensible competitor through stock ownership "divest itself of the stock held."

Our contention was and is that it was within the scope of congressional authority to declare that intercorporate stockholding between or among corporations purportedly or ostensibly functioning as competitors in interstate commerce was a direct obstruction in the channel of interstate commerce; and that it was likewise within the scope of congressional authority to delegate to an administrative agency of Congress the power and authority to abate or remove from the channel of commerce the specific trade practice thus declared to be a direct obstruction in the channel of free, normal and competitive trade.

In briefs on behalf of the Government in various suits under the Sherman Act are found the terms "local price discriminations," "tying contracts," "fake competitors" and "bogus independents" as captions under which have been developed the argument that these practices while not in and of themselves violative of the Sherman Act were badges or indicia of monopolistic effort to exclude unfairly from the competitive field. Our contention was and is that the Clayton Act dealt with these specific practices and gave to the Federal Trade Commission the power (and only the power) to remove or abate these specific practices. Whether the words "holding company," "bogus independent" or "fake competitor" comprehensively and accurately describe the evil dealt with by Section 7 does not seem to us important.

Ostensibly functioning as though they were competitors by corporations whose activities are *in fact* dominated and controlled by intercorporate stockholding (Section 7) or by interlocking directorates (Section 8) may, we have always contended, be declared by Congress to be *a thing* unduly and directly obstructive to the free channel of interstate trade and therefore *a thing* which Congress may authorize its administrative agency to remove from such channel. But likewise we have always contended that the question of the right "to hold, own, control and/or operate properties, physical assets and businesses"—whether illegally obstructive of the channel of interstate commerce—is a question which Congress has committed exclusively to courts of equity under Section 4 of the Sherman Act (26 Stat. 209) which is applicable alike to corporations and individuals by the specific language of Section 8 which says (26 Stat. 210):

> "The word 'person' or 'persons,' wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country."

The complaint against Swift & Company called upon respondent to show cause why an order should not be entered "requiring it to divest itself of stock or share capital." (Rec., 65.) The order actually entered, instead of following the language of the statute or of the complaint, denies Swift & Company the right to own, control or operate "properties, physical assets and businesses" which had been conveyed to Swift & Company by deeds and bills of sale a year or two before the proceedings were initiated in 1919 and four or five years before the order was entered in 1922. The question of

the legality, under federal law, of ownership (whether corporate or individual) of physical property is to be determined, as we respectfully submit, by "proceedings in equity" to be instituted "under the direction of the Attorney General" and by the entry by a Federal Court of Equity of "such order or prohibition as shall be deemed just in the premises." (Sec. 4 Sherman Act—26 Stat. 209.)

We respectfully submit that the Brief for Respondent misconceives the scope and effect of the decision of this court in the *Northern Securities case* (193 U. S. 197). As we read that case this court accepted the position taken in the brief of Attorney General Knox that if and when stock ownership and power exercised through such ownership "operate directly on interstate commerce, and do not affect it only indirectly, incidentally and remotely" (315) so that such ownership and power are found to be obstructing interstate commerce, then "of course, it makes no difference whether the obstruction be physical or economic,—whether it be a sand-bar, a mob or a monopoly—whether it result from the sinking of a vessel, or the stifling of competition—the power of Congress to remove it is the same in each case." (306) That such is the correct interpretation of the decision in the *Northern Securities case* seems clear from what is said by this court in *Harriman* v. *Northern Securities Company*, 197 U. S. 244, wherein claim was made that the judgment or opinion in the *Northern Securities case* (193 U. S. 197) had made adjudication concerning the disposition of the stock acquired by the Northern Securities Company. This court said at page 291:

> "In speaking of the situation as between the Government and the defendants, the Securities Company is sometimes referred to as the custodian of the shares and sometimes as the absolute owner, but

in the sense that in either view the combination was illegal. For the purpose of that suit it was enough that in any capacity the Securities Company had the power to vote the railway shares and to receive the dividends thereon. The objection was that the exercise of its powers, whether those of owner or of trustee, would tend to prevent competition, and thus restrain commerce.

Some of our number thought that as the Securities Company owned the stock the relief sought could not be granted, but the conclusion was that the possession of the power, which, if exercised, would prevent competition, brought the case within the statute, no matter what the tenure of title was."

At page 299:

"Doubtless it became the duty of the Securities Company to end a situation that had been adjudged unlawful, and this could be effected by sale and distribution in cash, or by distribution in kind, and the latter method was adopted, and wisely adopted, as we think, for the forced sale of several hundred millions of stock would have manifestly involved disastrous results."

II.

CONSTITUTIONAL QUESTIONS ARISE ONLY IF AND WHEN SECTION 11 BE CONSTRUED TO GRANT THE COMMISSION IMPLIED AUTHORITY ADDITIONAL TO THE AUTHORITY WHICH IS EXPRESSLY GRANTED BY SAID SECTION 11.

We fail to find in the brief for respondent any reference to the very specific language of Section 11 of the Clayton Act, or to the argument of petitioner that said Section 11 provides the specific and exclusive form of order—the precise and only writ of execution—which Congress authorized its administrative agency to issue when hearing discloses the evil trade practice of intercorporate stockholding which is prohibited by Section 7.

Said Section 11 of the Clayton Act is as follows (italics ours):

> "That authority to enforce compliance with sections 2, 3, 7 and 8 of this act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:
>
> Whenever the Commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of Sections 2, 3, 7 and 8 of this act it shall issue and serve upon such person a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. * * * If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, *and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this act, if any there be, in the manner and within the time fixed by said order.*"

As pointed out Section 7 deals with intercorporate stockholding and Section 8 with interlocking directorates —such interlocking directorates being forbidden to certain banks and also to all corporations engaged in whole or in part in interstate commerce if one of such corporations has capital, surplus and undivided profits aggregating more than $1,000,000 and if such corporations are or shall have been theretofore, by virtue of their

business and location of operation, competitors so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws.

It is respectfully submitted that if Section 11 confers power upon the Federal Trade Commission to enter the order hereinbelow set forth in the left column as an appropriate corrective order to remove the evil of "intercorporate stockholding," then there must be like implied power in the Commission and in the Federal Reserve Board to enter like corrective order such as is set forth in the right column to remove the evil of "interlocking directorates."

TO CORRECT INTERCORPORATE STOCKHOLDING.

NOW, THEREFORE, IT IS ORDERED: That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:

(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by anyone for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisition and/or holdings of such capital stocks.

TO CORRECT INTERLOCKING DIRECTORATES.

NOW, THEREFORE, IT IS ORDERED: That respondent, within six calendar months from and after the date of the service of a copy of this order upon it shall:

(1) Cease and desist from further violating Section 8 of the Clayton Act by continuing to have as a director any of the following named persons: ....., ..., ... and cease and desist from holding, controlling and/or operating or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business of the said ..... Company which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawfully having directors who were at the same time directors of the said ..... corporation; and to that end respondent shall:

(2) So rid itself of the said directors chosen contrary to the provisions of Section 8 in such manner that there shall not remain to respondent either directly or indirectly, any of the fruits of said interlocking directorates, including the control and/or operations of said ..... corporations, or either of them, resulting from said respondent having directors who were at the same time directors of said other corporations.

III.

THE ASSERTION BY THE COMMISSION THAT IT POSSESSES BY IMPLICATION OR BY INFERENCE AUTHORITY WHICH IS NOT EXPRESSLY GRANTED BY SECTION 11 RAISES CONSTITUTIONAL QUESTIONS WHICH ARE NOT RAISED BY CONSTRUING THE EXPRESS GRANT CONTAINED IN SAID SECTION 11 TO BE SOLE AND EXCLUSIVE.

We are in complete accord with the proposition stated and urged in the brief for respondent that "there is in the statute no unconstitutional delegation of judicial powers."

The power which the statute gives is plainly stated as being authority to enter an order to "cease and desist from such violations and divest itself of the stock held." (Sec. 11.) As stated by Mr. Justice McReynolds in *Federal Trade Commission* v. *Sinclair Refining Company*, 261 U. S. 463, 475:

> "The powers of the Commission are limited by the statutes."

When the Commission asserts that although neither the Trade Commission Act nor the Clayton Act anywhere gives authority to the Commission even to order a sale of stock, nevertheless the granted power to order a respondent to "cease and desist" inferentially or impliedly includes the power to require the sale of physical property, then it is respectfully submitted that appropriate reply to such asserted claim is found in the language of Mr. Justice Swayne in *Fertilizing Company* v. *Hyde Park*, 97 U. S. 659, 666:

> "Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be

> shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court."

It is respectfully submitted that Congress did not confuse and intermingle, in the powers given the Federal Trade Commission, the functions which are administrative with functions which are judicial; that there is no more justification for the asserted claim of implied judicial power on the part of the Federal Trade Commission in connection with its administrative duty of preventing obstruction to the channel of interstate commerce through intercorporate stockholding than there would be for asserting implied judicial power on the part of the Secretary of War in preventing obstruction to such channel through bridges of insufficient height or span. The distinction between functions which are administrative and those which are judicial has been clearly drawn by this court.

In *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177, it was held that Congress may, in order to enforce its enactments, clothe an executive officer with power to ascertain whether certain specified facts exist and thereupon to act in a prescribed manner, without delegating, in a constitutional sense, legislative or judicial power to such officer.

The court says (192):

> "This court has heretofore held upon full consideration and after an examination of the adjudged cases: 1. That Section 18 of the River and Harbor Act of March 3, 1899, 30 Stat. 1151, could not reasonably be taken as a delegation of legislative and judicial power to an Executive Department of the Government; that the statute did not in any real, constitutional sense delegate to the Secretary of War any power that must, under our system of government, be exclusively exercised either by the legis-

> lative or judicial branch of the Government; that under its paramount power to regulate commerce on and over the navigable waters of the United States Congress could require that such waters be freed from unreasonable obstructions to navigation; that the statute in effect prescribed the general rule, applicable to all navigable waters, that free navigation should not be hampered by unreasonable obstructions arising from bridges of insufficient height, width of span or other defects; that instead of exerting its power by direct legislation in each case of a bridge alleged to constitute an unreasonable obstruction to navigation, Congress charged the Secretary of War with the duty of ascertaining, in each case, upon notice to the parties concerned, whether the particular bridge came within the general rule prescribed."

The order herein retroactively requires the setting aside of deeds and bills of sale which were executed and delivered in 1917 and 1918 and requires that Swift & Company cease and desist from owning and/or operating properties, physical assets and businesses (Rec., 90, 91) now and for many years last past (in the language of the findings made by the Commission) "operated as the plants and businesses of Swift & Company" upon one of which plants (Moultrie) Swift & Company (the holder of record title) up to October 30, 1920, had expended (Com. Ex. 57, Rec., 1324 and Respondent's Ex. 13, Rec., 1557, 1558) almost a million dollars for betterments and improvements (or many times the original purchase price) and upon the other of which plants (Andalusia) Swift & Company's expenditures for betterments and improvements, after taking title thereto, were much more than the original purchase price. (Respondents' Ex. 27, Rec., 1571.)

Such an order, we respectfully submit, ignores the fact that the Federal Trade Commission is purely the admin-

istrative arm or agency of the legislative branch of the Government, and such order attempts to usurp powers which are inherently judicial. In *Sinking Fund Cases*, 99 U. S. 700, Mr. Justice Field said at page 761:

> "The distinction between a judicial and a legislative act is well defined. The one determines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Wherever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercise of legislative functions."

Conclusion.

In conclusion we respectfully reiterate the statement in our opening brief that no constitutional question arises in this case if Sections 7 and 11 of the Clayton Act are construed to mean precisely and only what they say. And we respectfully submit that if consideration of any constitutional question is made necessary only if and when the specific language of Sections 7 and 11 be departed from, or enlarged by implication or by inference, then it is wholly immaterial whether the constitutional questions suggested in our brief (pp. 44-61) or the constitutional questions suggested in the Brief for Respondent (pp. 40-48) are the particular and precise constitutional questions thus thrust upon the court by departure from the language of the two sections. Whichever or whatever be the correct constitutional question which can arise only if and when a particular construction be sought, the controlling rule established by this court would be the rule stated in paragraphs 2 and 3 of

the syllabus of the decision in *United States* v. *Delaware & Hudson Co.* 213 U. S. 366, as follows:

> "The duty of this court in construing a statute which is reasonably susceptible of two constructions, one of which would render it unconstitutional and the other valid, to adopt that construction which saves its constitutionality (*Knights Templar Indemnity Co.* v. *Jarman*, 187 U. S. 197) includes the duty of avoiding a construction which raises grave and doubtful constitutional questions if the statute can be reasonably construed so as to avoid such questions. *Harriman* v. *Interstate Com. Comm.* 211 U. S. 407.
>
> This rule applied to the commodities clause of the Hepburn Act so as to avoid deciding the constitutional questions which would arise if the clause were construed so as to prohibit the carrying of commodities owned by corporations of which the carrier is a shareholder, or which it had mined, manufactured or produced at some time prior to the transportation."

All of which is respectfully submitted.

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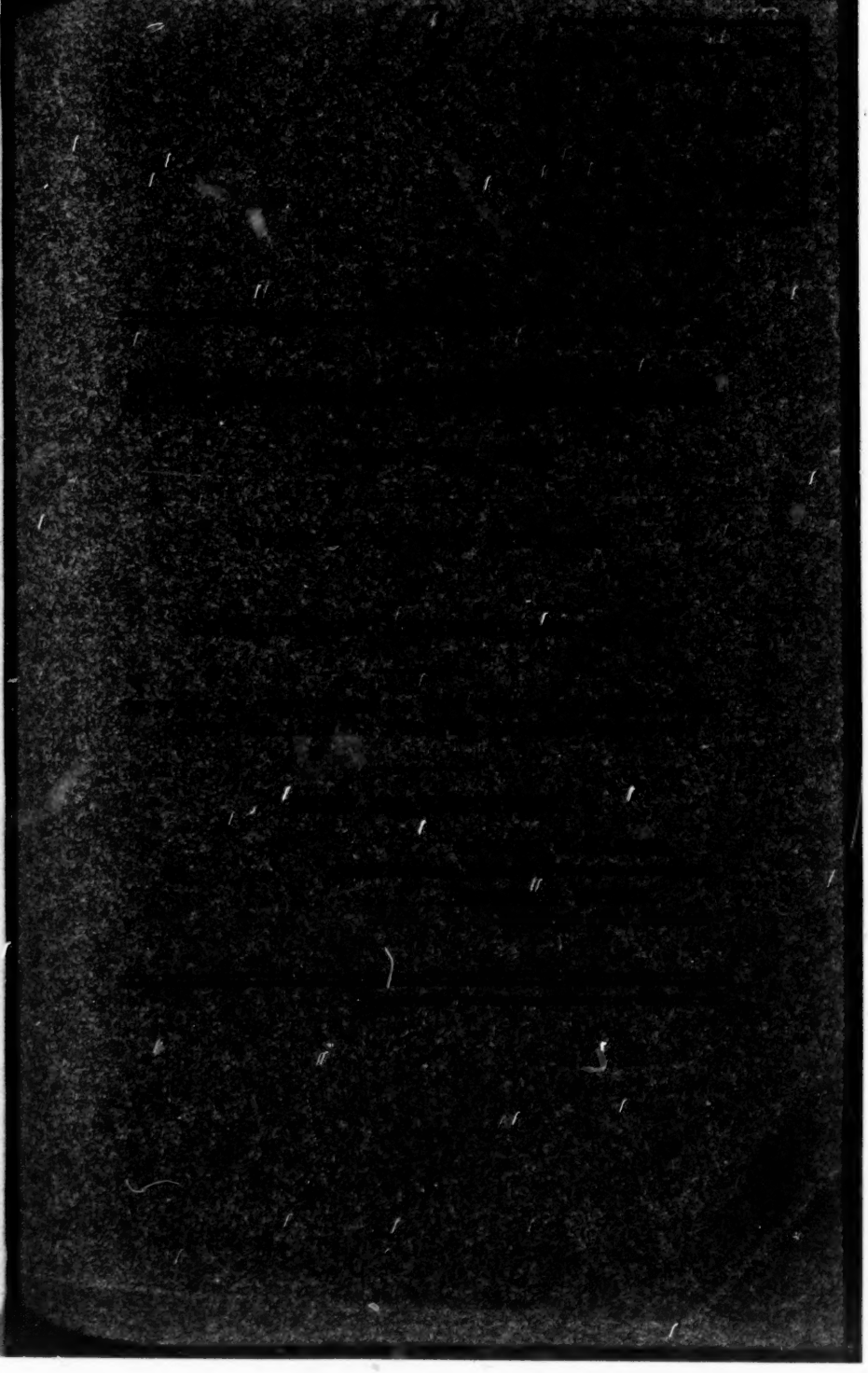

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 231

SWIFT & COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Court below is found in 8 F. (2d) 595. It also appears at pp. 1603–1610 of the printed transcript.

GROUNDS OF JURISDICTION

This was a petition by Swift & Company to the Circuit Court of Appeals for the 7th Circuit to review and set aside an order of the Federal Trade Commission (R. 90–91) entered under authority of Sections 7 and 11 of "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes" (38 Stat. 730), popularly known as "the Clayton Act"

The jurisdiction of the Court below was invoked under Section 11 of that Act. A decree affirming the order of the Commission was entered on February 16, 1925. (R. 1611.)

Jurisdiction of this Court is invoked under Section 11 of the Clayton Act and under Section 240 of the Judicial Code. (*Federal Trade Commission* v. *Gratz*, 253 U. S. 421.)

THE FACTS

The Court below, in the course of its opinion, states:

> The Commission found—and no other finding could have been made—that the purchaser was engaged in interstate commerce; that while so engaged, he purchased all the stock of the Moultrie Packing Company and the stock of the Andalusia Packing Company, both of which companies were also engaged in interstate commerce; and that the effect of such acquisition was to substantially lessen competition between the corporation whose stock was acquired and the corporation making the acquisition. (R. 1606.)

The following are the salient facts with respect to the extent of the business of the Moultrie and Andalusia companies, both geographically and in volume, the competition between these companies and between them and Swift & Company and the elimination of that competition by the acquisition.

1. Organization and volume of business of Moultrie and Andalusia Companies

(a) *Moultrie Company.*

The Moultrie Packing Company was organized some time in 1913 (Rec. p. 1278), and about December, 1914, actively began the business of slaughtering beef cattle and hogs and selling meat and meat products. Its sales, by years, from 1914 to and including the first five months of 1917, were as follows:

	1914	1915	1916	1917 (5 months)
Pork.....lbs..	200, 598	2, 199, 441	7, 305, 506	3, 907, 909
Beef.....lbs..	24, 739	442, 221	196, 333	252, 280
Lard.....lbs..	20, 320	326, 580	1, 171, 875	827, 575

The paid-up capital stock of the company in June, 1917, was approximately $97,000. (Rec. p. 1270.) In May, 1917, its surplus amounted to $92,170.79 (Rec. p. 1316), and the net profits from January 1, 1917, to April 30, 1917, amounted to $59,997.09 (Rec. p. 1316).

(b) *Andalusia Company.*

The Andalusia Company was organized in October, 1915, by residents of Andalusia, Alabama, and vicinity. (Rec. pp. 362, 1447.) Its paid-up capital stock was $133,250 (Rec. p. 1453) held by from 175 to 200 persons in the city of Andalusia and vicinity (Rec. pp. 360–361). It began operations about June, 1916. (Rec. p. 362.) Its sales were approxi-

nately, for six months of 1916 and five months of 1917, as follows:

	1916 (part of the year)	1917 (five months)
Pork ..... lbs..	3,065,341	2,911,692
Beef ..... lbs..	6,426	189,523
Lard ..... lbs..	383,774	564,293

Its gross profits for the year ending May 1, 1917, were $130,087.23, and its net profits $62,646.80. (Rec. p. 1399, Ex. 112.)

2. Interstate commerce involved

Both the Moultrie and Andalusia companies had important interstate business in direct competition with Swift & Company, and in competition with each other. (R. 469–470; 1541, 244, 222, 227, 419.)

3. Character of commodities and demand therefor

Both the Moultrie and Andalusia Companies slaughtered cattle and hogs raised almost exclusively in Georgia, Alabama, and Florida. Pork was the principal product sold by both. The hogs raised in the territory from which these companies drew their supply were, up to July, 1917, very largely fattened upon peanuts and similar feeds, which results in the meat being softer and more oily than the meat from corn-fed hogs. This makes it more difficult to handle, the shrinkage is greater both on fresh and cured meats, and to this extent it is less desirable to the dealers. (Rec. pp. 655–656, 658.)

The meat, however, is sweet and wholesome and the flavor much liked by many consumers. (Rec. pp. 523, 652, 696, 1054.) Substantial evidence of the demand for this particular commodity is found in the fact that Swift & Company purchased substantial quatities of it from the Andalusia Company prior to securing control of the company (Rec. pp. 949, 950, 1077–1078), and that after the purchase of the stock they sold the products in place of all brands of their western pork except Premium (Rec. p. 921).

4. Competition between Moultrie and Andalusia Companies and between these companies and Swift & Co.

(a) *Territory in which products were sold, selling organization, and sales in particular cities.*

The Moultrie Packing Company, in the year 1916 and until June, 1917, sold its output in 215 cities, towns, and villages in Georgia, 56 cities, towns, and villages in Florida, and 15 cities, towns, and villages in Alabama. Large quantities of products were sold by the company especially in Atlanta, Macon, and Savannah, Georgia; in Jacksonville, Florida (Rec. p. 26), and in Birmingham, Alabama (Rec. pp. 355, 356). In the larger cities the company sold through brokers. The company's broker in Atlanta sold from one to three carloads of products per week (Rec. p. 198); this broker sold to from 150 to 200 of the large buyers of fresh meats in that city (Rec. p. 150). His total sales of meat and meat products from June, 1916, to

May, 1917, amounted to $238,000. (Rec. p. 138.) According to Moultrie Packing Company ledger he sold 1,264,699 pounds of fresh meat during 1916 and the first six months of 1917, and during the same period his sales of smoked meats amounted to $176,948. (Rec. pp. 1543–1546.) The company's broker in Jacksonville, Florida, sold from 30,000 to 60,000 pounds of products per week. (Rec. pp. 469–470.) Moultrie Packing Company ledger shows that during 1916 and first six months of 1917 he sold 856,495 pounds of fresh meat and during the same period his sales of smoked meats, etc., amounted to $55,671.33. (Rec. pp. 1547–1550.)

The Andalusia Packing Company sold meat and meat products in the same general territory covered by the Moultrie Company. It sold in 19 cities and towns in Georgia, 41 cities and towns in Florida, and 115 cities and towns in Alabama. (Rec. p. 419.) Its broker in Atlanta sold meat and meat products to the value of approximately $4,000 to $6,000 per week in that city for a period of approximately nine months. (Rec. pp. 222, 227.) Its broker in Birmingham, Alabama, sold products to the amount of 2 to 3 carloads per week (Rec. p. 288); during a period of about a year this broker's sales amounted to $268,699 (Rec. p. 292); and from January 1, 1917, to September of that year he sold 682,733 pounds of fresh meats (Rec. p. 292). He had fully 25% of the business on fresh pork cuts in the down-town section of Birmingham.

(Rec. p. 319.) This section of Birmingham sold about 30% of the meat sold in the city of Birmingham. This broker had four salesmen, who covered 43 cities and towns which were named and some 15 or 20 smaller places which he was unable to name from memory. This testimony was corroborated by another witness. (Rec. p. 332.)

Besides selling through brokers, the company traveled two or three salesmen in addition to its office salesmen. (Rec. p. 363.)

(b) *Business of Swift & Company in same territory.*

During the period from the entry of the Moultrie and Andalusia companies into the meat-packing business, and until July, 1917, Swift & Company was actively engaged in selling fresh and cured meats and meat products, not only in the same territory but in the same towns and to the same retail dealers who purchased and sold the products of the Moultrie and Andalusia companies. During that period Swift & Company had branch houses in Augusta, Atlanta, Macon, Columbus, and Savannah, Georgia; at Jacksonville, Pensacola, and Tampa, Florida, (Rec. p. 251); and at Birmingham, Gadsden, Anniston, Huntsville, Albany, and Montgomery, Alabama (Rec. p. 343); it traveled salesmen over the entire territory and solicited business in probably every one of the three or four hundred cities and towns in which the Moultrie and Andalusia companies sold their out-

put (Rec. pp. 138, 247, 248, 293, 311, 312, 342–352).

It will thus be seen that the Moultrie Company was, until July, 1917, in competition with the Andalusia Company in important territory; and that both companies were in active, vigorous, and extensive competition with Swift & Company in the sale of fresh and cured meats in the principal cities and towns of Georgia, Florida, and Alabama.

(c) *Price differential between local products and western pork.*

Prior to the acquisition by Swift & Company of the stock of the Moultrie and Andalusia Companies this soft or locally slaughtered pork was usually sold by the companies at from one to four cents per pound less than hard, western pork, the differential being narrower on fresh-pork cuts (Rec. pp. 153, 168, 655, 696, 438, 439, 503–504); though at times an equal price could be had for fresh cuts (Rec. pp. 158, 228, 321). This difference in price could be made for, among others, two reasons: First, the cost of fattening hogs on peanuts and similar feeds is less than the cost of fattening them on corn (Rec. p. 642); and second, the differential between the freight on meat shipped from northern and western packing plants and that on meat shipped by the Moultrie and Andalusia Companies was substantially in favor of the local slaughterers.

(d) *Other advantages enjoyed by the acquired companies.*

A further advantage which the Moultrie and Andalusia companies enjoyed over their distant competitors in the North and West is found in the fact that their fresh pork would not ordinarily have to be frozen before shipment and sale (Rec. p. 168), while western and northern pork must be frozen before shipment. Frozen pork is not so well liked as that which has not been frozen. (Rec. p. 137.) The product also was absolutely fresh, reaching the retailer's table from 24 to 48 hours after slaughter. (Rec. p. 168.) The appeal that the product was locally produced and that its purchase and sale would tend to the general prosperity of the section was also of great assistance in selling the product of the local companies. (Rec. p. 329.)

5. Exclusive of the five large packers, the acquired companies were practically the only substantial distributors of fresh pork in the extreme Southeast at time of acquisition

The Moultrie and Andalusia companies appear to have been the first companies to have sold this locally slaughtered pork to any extent in the territory covered by the evidence in the case. (Rec. pp. 135, 186, 316, 441–445, 633, 1053.) Moreover, prior to the entry into the market of the Moultrie and Andalusia companies, the five great packing companies were, with one relatively unimportant exception, practically the only companies selling fresh pork in that territory in substantial quanti-

ties with any degree of regularity. (Rec. pp. 316, 1050, 1051, 1240–1241.)

6. Volume of sales of Moultrie and Andalusia pork products in Atlanta, Jacksonville, and Birmingham markets compares favorably with Swift & Company sales in those markets

(a) *Fresh pork.*

The principal product sold by the Moultrie and Andalusia companies was fresh pork. During the year 1916 the Moultrie Packing Company sold in the Atlanta market 692,558 pounds of fresh meat. (Rec. 1543 to 1546, Resp. Ex. No. 5.) This fresh meat was practically all pork. (Rec. pp. 138–139.) During a part of that year the Andalusia Packing Company was also shipping pork products into Atlanta, but the exact volume could not be ascertained. Swift & Company during 1916 sold 823,682 pounds of fresh pork in the Atlanta market. (Rec. 251.) During the first six months of 1917 the Moultrie Packing Company sold 571,741 pounds of fresh pork in the Atlanta market. (Rec. 1543–1546.) By this time the Andalusia products were coming steadily into the market at the rate of $4,000 to $6,000 per week. (Supra, p. 6.)

In Jacksonville, Florida, the Moultrie Packing Company during 1916 sold 492,917 pounds of fresh meat through its broker, Sam T. Smith, who (pp. 1547–1550, Resp. Ex. No. 6) testified that the Moultrie products he was selling were pork products (Rec. p. 468). During 1916 Swift & Company

sold 355,063 pounds of fresh pork in the Jacksonville market. (Rec. p. 351.)

In Birmingham, Alabama, Swift & Company sold during 1916, 1,533,644 pounds of fresh pork. (Rec. p. 351.) There is no record of the exact number of pounds of fresh pork sold by the Andalusia Packing Company in that market during that period of time, but during the first six months of 1917 Mr. E. P. Allen, broker, testified from his records that he sold for the Andalusia Packing Company 682,733 pounds of fresh meat. (Rec. p. 292.)

(b) *Total sales pork products.*

The total production of pork products by the Moultrie and Andalusia Companies during the year 1916 amounted to 10,370,847 pounds, and during the first six months of 1917 amounted to 6,822,608, or a total of 17,193,448 pounds from January 1, 1916, to June 30, 1917. (Rec. pp. 1365, 1467.)

During the year 1916 Swift & Company sold in the Birmingham and Atlanta districts, covering practically all the territory in the States of Alabama, Georgia, and Florida, a total of 32,760,131 pounds of pork products, or about three times the total production of the Moultrie and Andalusia Packing Companies during the same year. (Rec. pp. 251, 351.)

7. Competition in soft pork "hurt" Swift & Company and other large packers

The factors above summarized had served to make the Moultrie and Andalusia companies sub-

stantial and troublesome competitors of Swift & Company in Georgia, Alabama, and Florida, by the spring of 1917.

The Atlanta manager for the Cudahy Packing Company in 1917 in this territory testified that the people selling southern pork hurt the business of the Cudahy Packing Company to the extent of Cudahy having to reduce prices on western pork to compete with southern pork or let them take the business, and that he thought the managers of the other large packers, including Swift & Company, had the same experience, as they were working under similar conditions. (Rec. p. 639.)

8. Elimination of competition between the acquired companies and between these companies and Swift & Company

Immediately upon purchasing the share capital of the two companies Swift & Company took over the control of their operations. An employee of Swift & Company was sent to Moultrie to take charge of the office of the company, and another employee "to watch things" and work with the then manager, who was temporarily retained. (Rec. pp. 231, 602, 1270.) On or about July 16, 1917, Swift & Company sent two of its employees to Andalusia to take charge of the business of that company (Rec. pp. 379, 392, 395, 540, 1401), the then manager remaining with the company until about November, 1917, but being under the direction of Swift & Company.

Shortly after the purchase of the stock of the companies by Swift & Company the branch houses of the latter began to sell the products of both companies, though the brokers previously handling the goods were temporarily retained. (Rec. pp. 232, 293, 723, 725, 1346–1347.)

Almost immediately upon the purchase of the stock and the taking charge of the plants by the representatives of Swift & Company competition between the products of the Moultrie and Andalusia companies and those of Swift & Company was lessened by the substantial increase in price of soft-pork products produced by the Moultrie and Andalusia companies, the prices being brought up almost to the level of the prices of hard western pork sold by Swift & Company. (Rec. pp. 153, 161, 162, 173, 421, 475–479, 696, 438–439, 498, 503–505, 510–511, 1346–1347, 1348, 1354–1356, 1358, 1394–1395, 1416–1418, 1420, 1425.)

The intention to increase the prices of soft-pork products manifested itself immediately on the purchase of the stock of the two companies.

On July 25, 1917, T. G. Conner, manager of the Andalusia Company, wrote to J. W. Clark Company, the former's broker at Atlanta, to the effect that the sale of the plant had been consummated, but so far as the general public was concerned there would be no difference in management, and as far as they could without conflicting with branch houses they did not wish to sever en-

tirely their sales connections. "We will probably ask you to continue, to some degree, at least, to handle our products. We only request that you do not sacrifice sales and that you do not break the market." (Rec. pp. 1346–1347.)

Practically all the important brokers who handled the products of the Moultrie and Andalusia companies testified that the differential between the price of western pork and southern pork was narrowed when Swift & Company secured control of the stock and that they were required to maintain the new differential. (R. 1394–1395, 162, 475, 476.)

Retail dealers in Atlanta and Jacksonville had to pay higher prices for soft pork as compared with western pork after the acquisition by Swift & Company of the stock of Moultrie and Andalusia companies. (Rec. pp. 153, 438–439, 502–505.)

Branch-house price lists and weekly differential letters sent by Swift & Company to its branch houses also show a narrowing of the margin between soft pork and western pork, the differential on June 20, 1921, ranging from ½¢ to ¾¢ on fresh loins, 1¢ on skinned shoulders, and best grade southern hams 1¢ over second-grade western hams. (Rec. pp. 1488–1489.) The margin on these lists in the summer of 1921 averaged from ½¢ to 1½¢ (Rec. pp. 1488–1523) as against a differential before the acquisition of these companies of from 2 to 5 cents (supra, p. 8).

The brokers who had formerly sold the products of the companies began to find it increasingly dif-

ficult to procure sufficient products to supply their trade, and in October and November, 1917, relations with them were severed (R. 471, 473, 478, 481). (R. 307–309, 1424–1426.) Thereafter, the products of the two plants were sold through the branch houses of Swift & Company or by car routes and traveling salesmen traveling out from the two plants. Later on, sales from the Andalusia plant were entirely discontinued except as to products sold in Andalusia, and the entire selling organization was removed to the regular branch house of Swift & Company at Montgomery. (Rec. pp. 943, 1036.) Thus all competition which had existed between Swift & Company and the Moultrie and Andalusia companies, as well as all competition between the two last-named companies, was entirely wiped out, and soft pork renewed as a troublesome competitive product in this territory.

SUMMARY OF ARGUMENT

The first paragraph of Section 7 of the Clayton Act prohibits an operating company engaged in interstate commerce from acquiring the share capital of another operating company where the effect may be to substantially lessen competition between them. The second paragraph applies to pure holding companies and prohibits such corporations from acquiring the share capital of two or more corporations where the effect may be to substantially lessen competition between any of the

corporations. A fair review of the committee reports and debates shows that the first paragraph of the Section was not directed only against secret acquisitions of stock or that the second paragraph only applies to holding companies secretly controlling competing companies. A bogus independent is used to restrict competition between the parent company and its competitors, not between the parent company and the bogus. The prohibition, therefore, against lessening competition between the two companies is not applicable to bogus companies.

At the time of the passage of the Act holding companies which restrained trade or threatened a monopoly were prohibited by the Sherman Law (*Northern Securities case*). Section 7 was intended to reach restraints of trade and monopolies in their incipiency and before they had grown to such proportions as to violate the Sherman Law. To accomplish this the statute prohibits intercorporate purchases of stock which may substantially lessen competition between the corporations.

The statute does not regulate manufacture or the ownership of property, but is a direct regulation of competition in interstate commerce. That the restraint imposed upon competition by the control of stock of competing corporations is a direct restraint upon competition has been recognized since the *Northern Securities case*. Therefore, Congress in passing the Clayton Act exercised its power directly to regulate interstate commerce and

not its power to protect that commerce from acts arising de hors the body of commerce itself.

In prohibiting the purchase of stock where the effect may be to lessen competition between the corporations the Act does not impose an undue limitation upon the liberty of corporations to contract. It restricts this liberty at the point where it threatens the public welfare by the elimination of competition. Petitioner has not discharged the burden of showing that the Act is not reasonably calculated to preserve freedom of competition, or that it unduly limits the rights of corporations.

The statute as construed by the Commission does not confer upon it jurisdiction over the ownership of property. The Act authorizes the removal of a direct restraint upon competition by requiring the sale of the stock purchased, together with the rights which such stock represented. To authorize the Commission to require such divestiture is to touch manufacture or property rights only as an incident to the divestiture of share capital. This remedy has been invoked under the Sherman Law and the Statute has not been held for this reason to be a regulation of manufacture.

As construed by the Commission the statute does not prohibit a corporation from openly purchasing the properties, assets, and going business of a competitor while leaving natural persons free to do so. Where stock has been illegally acquired and the Commission proceeds, the gist of the offense is the acquisition of stock with the prohibited ef-

fect. This is true even where the acquiring corporation subsequently transfers to itself the properties and assets of the acquired corporation. The wrong is still the illegal acquisition of stock. The only question, therefore, of discrimination between persons and corporations under the statute arises from the prohibition against corporations acquiring the stock in competing corporations and the absence of prohibition against natural persons acquiring stock in competing corporations. Experience had disclosed that restrictions of competition through ownership of stock in competing corporations were effected by corporations not by natural persons. The discrimination made by Congress in this respect is reasonable and based upon differences which bear a reasonable and just relation to the end sought to be attained.

There is no unconstitutional delegation of judicial power with respect to physical properties. Petitioner appears to admit the constitutionality of the statute as applied to divestiture of stock. If this jurisdiction may be constitutionally conferred, the authority to compel divestiture of the properties is also valid.

ARGUMENT

I

The prohibitions of Section 7 of the Clayton Act are not limited to holding companies which operate subsidiaries as "bogus independents"

Counsel for Petitioner at pages 26 to 28 of their brief seek to establish that the first two paragraphs

of Section 7 of the Clayton Act do not prohibit one corporation from purchasing stock in another where the effect may be to substantially lessen competition between them, but prohibit only the creation of holding companies which operate the corporations whose stock is held as "bogus independents," i. e., under the representation that they do not own or control them. To establish this counsel seek to show (1) that "bogus independents" were referred to in the opinion of this Court in the *Standard Oil Case* (though they fail to notice that the decree in that case makes no reference to the employment of such methods but dissolved the holding company which was not secret but known to all the world); (2) that the Senate Committee report on the bill makes it clear that *holding* companies were intended to be prohibited by the Act; and (3) that in one part of his speech on the bill Senator Cummins states that a corporation ought not to be permitted to purchase the stock of competing companies and continue to operate them under the old name so that the public is not advised of the purchase. In other words, counsel seek first to establish that there had been before the passage of the Act such a practice as the operation of bogus independents, drawing this conclusion from sources outside of the Act or the Committee reports; second, that the Committee report discloses that the Act was intended to prohibit holding companies, and then, without establishing any connection between the two matters they conclude that only a

prohibition of holding companies which operate the controlled companies as bogus independents was intended to be reached. We respectfully submit that the conclusion is not justified.

On this point of construction we submit:

1. The wording of Paragraphs 1 and 2 of Section 7 do not contain a word or phrase which can be construed into meaning that only secret acquisitions of stock by one corporation in another are prohibited, and counsel for Swift & Company have failed to point to any ambiguity in its wording. Where the statute is plain on its face, there is no reason for resorting to construction.

2. If, however, resort to Committee reports and debates be had to show the history of the times and the mischief to be remedied, the result does not show that the intent of Congress was to prohibit only the secret ownership of the stock of competitors and the holding out of these corporations as independent. Doubtless one of the causes which moved Congress to enact the section was the fact that the control of one or more corporations by another was sometimes secret. But there were other and more weighty reasons. The desire of Congress went much deeper than this and sought to prohibit the holding of stock between competing corporations.

It will be seen that the excerpts from Committee reports reproduced in Petitioner's brief do not contain the suggestion that the bill was aimed at secret acquisition and holding of stock. That

suggestion, and it is only a suggestion, is found in the statement of a single Senator. True the Committee reports repeatedly assert that the purpose was to reach "holding companies," but the holding company did not ordinarily conceal its ownership of stocks in other companies. Combinations in this form were notorious. Senator Reed of Missouri, who was prominent in the debate on the measure, said:

> Mr. President, an open and public consolidation does not help us a bit. We want to stop trusts and monopolies. We must not undertake to do it by publicity. The monopolist to-day does not hide his light under a bushel. He does not proceed in secret. He comes boldly to the front. He creates his monopoly and declares that he has a monopoly and sells his stock on the strength of it. That is, in effect, true. The statement may seem a little exaggerated, but take the steel trust. Did they conceal at all the fact that they were undertaking to create a gigantic monopoly? (Cong. Rec. Aug. 27, 1914, p. 14316.)

Various statements of Senators prominent in the debate show that acquisition by one corporation of stock in competing corporations was intended to be prohibited and no limitation that the acquisition should be secret or continue secret is found.

Senator Cummins said:

> I know the Senator meant to be fair, but we are talking now about one corporation holding the stock of another. I say it ought

not to be permitted at all, but we can not go that far; we ought, however, to prevent one corporation holding the stock of another, the two being engaged in a competitive business. There may be some reason why that principle can not be carried out in its fullness in the case of common carriers. I am not considering them now; but there is no suggestion that I have ever heard that would prevent the principle from having its full and complete application not only with regard to existing corporations but with regard to all future corporations, so far as ordinary commerce and industry are concerned. It is a sound, wise policy for any country to adopt and maintain. That is the policy, I think, intended to be announced in the section. * * * We ought to go one step further back and say that, inasmuch as we know that the ownership by a corporation engaged in commerce of the stock of another corporation engaged in commerce does tend to eliminate competition and does tend to destroy the rivalry that should exist, therefore, when that one fact is shown—namely, that the two corporations are or ought to be competitive with each other—the stockholding becomes unlawful, without requiring any further inquiry or investigation. (Cong. Rec. Aug. 25–26, 1914, p. 14255.) * * * I believe we ought to take the high, defensible ground that two corporations engaged in the same kind of business must be independent, and that one must not hold the stock of another. We all know that whether the stockholding is large or small propor-

> tionately, it must influence the motives of the managers of the corporations. The stock is not acquired usually for any other purpose than to control or influence or direct the affairs of the corporation whose stock is thus acquired. (Cong. Rec. July 2, 1914, p. 11531.)

Again, in a colloquy between Senators Cummins and Reed, the following occurs:

> Senator CUMMINS. I know the Senator from Missouri certainly does not believe that the antitrust law forbids under all circumstances one business man from buying the business of another. That can not be true.
>
> Senator REED. No; but I undertake to say that the law ought to be that one corporation can not acquire the stock of another corporation and thus remove the competition between the two institutions.
>
> Senator CUMMINS. I agree with that. That ought to be our policy. (Cong. Rec. Aug. 27, 1914, p. 14316.)

3. The single utterance of Senator Cummins quoted at page 37 of the Petitioner's brief to the effect that acquisitions by a corporation of stock in a competing corporation ought to be disclosed, and a definition of "holding companies" by a writer on economic subjects are the sole support which Petitioner produces for its contention that Section 7 prohibits only secret acquisitions and the operation of the acquired companies as "bogus independents." In view of other statements of Senator Cummins and of other Senators above quoted and

those which follow (infra. pp. 27–28), it is submitted that this single statement does not show that Senator Cummins thought that the proposed measure reached only such acquisitions. The definition of holding companies has no weight whatever. It is submitted that the plain wording of the statute may not be changed by these considerations.

The whole argument that the Section was aimed at holding companies which operate the corporations controlled as "bogus independents" is inconsistent with the declaration that the ownership of the stock shall be unlawful if the effect may be to substantially lessen competition *between* the companies. "Bogus independent" companies are employed to lessen competition between the parent company and its competitors—not between the parent company and the secretly owned "bogus" company. Furthermore, such authority as there is on the subject holds that in order to amount to the operation of a "bogus independent" either the "parent company" or the "bogus company" must affirmatively hold the "bogus" out as independent. Mere failure to disclose the ownership or control of the "bogus" is not sufficient. (*U. S.* v. *International Harvester Co.*, 214 Fed. 987, 992.) Section 7 would not reach the operation of a "bogus independent" even if it be construed as prohibiting secret acquisition of stock, since it clearly does not provide that the "bogus" company shall affirmatively be held out as independent.

The conference ruling and the excerpt from Commissioner Murdock's testimony on pages 42–43 of petitioner's brief do not refer to acquisition of stock in violation of law followed by transfers of properties, as the language clearly shows, but to direct acquisitions of properties. We do not contend, of course, that "the mere purchased properties" violate the Clayton Act.

II

The section reaches substantial lessening of competition between two or more corporations by stock ownership and does not operate to prohibit only those undue restraints of trade prohibited by the Sherman law

In points (b) and (c), pages 38 to 43 of Petitioner's brief, counsel contend that the first two paragraphs of Section 7 do not prohibit acquisitions by corporations of the stock of competing corporations where the effect may be to lessen competition between such corporations, but that they prohibit such acquisitions only where the effect is substantially, directly, and injuriously to affect interstate commerce. It is not clear whether counsel mean that competition between the corporations must be substantial, and, if so, and it is eliminated, that there is a violation of the statute; or whether they mean that the business of the corporations must be so extensive that their combination by way of a holding company would amount to a restraint of trade or a monopoly within the meaning of the Sherman Act.

To support their position, however, counsel quote from various decisions under the Sherman law so that it may reasonably be inferred that the same test of legality is to be applied under this section as under the Sherman Act. If this be their position it is unsound. The purchase of stock by one corporation in one or more competing corporations if it result in restraint of trade had been unlawful ever since the decision of this Court in the *Northern Securities case*. (*Northern Securities Company* v. *U. S.*, 193 U. S. 327.) It would have been perfectly useless therefore for Congress to reenact a statute to make acquisitions of this character unlawful.

> If it was not intended to change the law from what it was under the then existing act, its enactment was meaningless and a vain thing, a presumption Courts will not indulge in when construing legislative acts. *United States* v. *United Shoe Machinery Co.*, 264 Fed. 138, 162, citing *Wis. Central R. R. Co.* v. *United States*, 164 U. S. 190, 202.

This Court in the *Magrane-Houston case* (*Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 356) and in the *United Shoe Machinery case* (258 U. S. 451, 459, 460) clearly held that the Clayton Act sought to reach restraints of trade in their incipiency and to determine their legality by a different test than that of the Sherman Law.

It is submitted that the clause

> Where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so

> acquired and the corporation making the acquisition,

and the clause

> Where the effect of such acquisition, or the use of such stock by the voting or granting of proxies, or otherwise, may be to substantially lessen competition between such corporations or any of them,

do not contain a word of doubtful meaning, nor could they be so arranged as to make their meaning more definite and unambiguous. If, however, resort to debates be had to show the history of the times and the legislative intent, it becomes clear that the intention of Congress was to say exactly what it did say. Senator Cummins, not long before the close of the debates on the measure, said:

> However it is expressed it is the mere fact of competition that ought to decide the whole situation. If the corporations are competitors, if they are engaged in the same kind of business, there ought not to be between them any such community as is created by one of them holding stock of the other. (Cong. Rec. Aug. 26, 1914, p. 14256.)

Senator Poindexter said:

> The proposition here, as I undertook to say before, is an entirely different one from the rule laid down by the Court in the Sherman antitrust Act. Here it is proposed to specify it, namely, the corporate ownership of stock in two competing corporations by the same holding company. (Cong. Rec. Aug. 27, 1914, p. 14317.)

Senator Smith of Georgia said:

> Mr. President, I only wish to say in voting for the committee amendment that this prohibition is one against conduct that eliminates or substantially lessens competition between the corporation whose stock is acquired and the corporation making the acquisition. (Cong. Rec. August. 27, 1914, p. 14318.)

The words "the substantial lessening of competition" in the third paragraph of the section do not change the clear prohibition of the first two paragraphs. This phrase can not, under any principle of statutory construction, be construed as demonstrating that where Congress has in the first two paragraphs of the section said "substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition," and "substantially lessen competition between such corporation or any of them," it meant to use the more general terms "substantially lessen competition." The first two paragraphs contain the prohibitive law. The third paragraph is permissive and provides that stock may be purchased in competing corporations for investment purposes, provided it is not used to bring about, or in attempting to bring about "*the* substantial lessening of competition." The definite article "the" in the last quoted clause clearly refers to something already mentioned, i. e., the language of the two

preceding paragraphs of the section, which is unmistakably specific.

The third paragraph must be read in the light of the first two paragraphs. So read it merely excepts from the operation of these two paragraphs acquisitions by one corporation of stock in another where the ownership of such stock is not used in such way as to violate the provisions of the first two paragraphs. The debates on the Act indicate that one of the purposes of the third paragraph was to permit insurance companies, trust companies, and similar institutions to invest in the stocks of competing corporations engaged in interstate commerce, provided that the stock so purchased were not used to bring about the lessening of competition between the companies whose stock was owned.

It is clear that the statute was intended to prohibit acquisition by one corporation of stock in a competing corporation where the acquisition substantially lessened competition between them.

III

The section is an exercise by Congress of its powers directly to regulate interstate commerce itself and not of its power to protect interstate commerce from burdens arising de hors the body of such commerce

Under Point II counsel for petitioner contend that the ownership of stock is not commerce nor an instrumentality of commerce and can not be regulated by Congress. To this we say that the purchase

by one corporation of the share capital of a competing corporation or corporations and its use of such stock to lessen competition between them in their business in interstate commerce is a part of commerce itself. The subject matter regulated is competition in interstate commerce, and the regulation is one dealing as directly with commerce as does the statute prohibiting the misbranding of goods shipped in interstate commerce or the monopolizing of interstate commerce by the merger of companies engaged in interstate commerce. Where competing companies engaged in interstate commerce combine by way of stock ownership, the effect upon competition in interstate commerce is direct and immediate. In the Clayton Act Congress exercises its power directly to regulate interstate commerce and not its power to protect that commerce from burdens or restraints arising de hors the body of commerce as it did in the act penalizing the use of fraudulent bills of lading (*United States* v. *Ferger*, 250 U. S. 199) and similar statutes. This has been recognized since the decision of this court in *Northern Securities Companies, supra*, and has been reaffirmed in the *Standard Oil, American Tobacco,* and other decisions.

In cases arising under the Sherman Act it has been consistently held that in order to vitiate such a combination it is essential to show only that by its necessary operation it tends to restrain interstate or international commerce. (*Addyston Pipe Company* v. *United States*, 175 U. S. 211; *United*

States v. *Knight Company*, 156 U. S. 1.) In the *Union Pacific case* (*United States* v. *Union Pacific R. R. Co. case*, 226 U. S. 61) the purchase by one railroad company of the controlling interest in the stock of another—not the creation of a holding company or the use of a bogus independent—was held to be illegal under the Act even though only three and one-tenths per cent of the tonnage of the Union Pacific and eighty-eight one-hundredths of one per cent of the tonnage of the Southern Pacific was competitive.

Thus far have Congress and the courts gone, under the Sherman Law, to regulate intercorporate holding of stock of corporations engaged in interstate commerce. Counsel for respondents appear to contend that Congress can not go farther and prohibit one corporation engaged in interstate commerce from acquiring the stock in another where the effect may be to substantially lessen competition between the companies. But we submit that the question of competition in interstate commerce is one over which Congress has plenary jurisdiction. It clearly appears that Congress was of opinion that it had not gone far enough in its prohibitions against the elimination of competition in interstate commerce by the purchase by one corporation of the share capital of competing corporations, but that it should go further along this line of regulation. Was it not competent for Congress so to regulate this subject matter as to prevent the creation of conditions which called for the

application of the Sherman Law? The decisions of this Court in *Standard Fashion Company* v. *Magrane-Houseon* and in the *United Shoe Machinery case* establish that Congress can at least go farther than it did in the Sherman Law. The legal basis of the right to proceed further in the regulation of competition has been so aptly stated by the court below that we venture to quote its language here:

> Must Congress act only when the child has grown to the stature of a giant? If authority exists to curb—or to dissolve—a corporation when it has reached the trust stage, may Congress not take steps to arrest the corporation's growth before the final stage has been reached? * * * The Government may, under the commerce clause of the Constitution, forbid every contract "which is reasonably calculated to injuriously affect the public interest." *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S., 202. It may act to anticipate or prevent an unfortunate situation as well as deal with the one that existed.
>
> As before stated, the Clayton Act supplemented the Sherman law, the practical enforcement of which was found difficult and often resulted in hardships to innocent parties. The section under consideration sought by means, which the Congress deemed expedient and effective, to prevent a condition which the Sherman law was designed to overcome when once it existed. Certainly courts should hesitate to say that the means se-

lected are not "appropriate" or "primarily adapted" to accomplish the desired end when it is conceded that the prevention of such "ends" through dissolution is within the recognized powers of Congress.

In other words, the issue is not one of authority of Congress to deal with an undesirable condition, but rather an asserted want of power to prevent that result through the means resorted to for that purpose. And the answer seems to be that Congress, having the authority to regulate interstate commerce, may do so by such means as to it seems appropriate to prevent a condition which is contrary to the settled public policy of the Government and inimical to the welfare of its people. (R. 1609.)

IV

The act is not an undue limitation upon the liberty of corporations to contract

In the *Northern Securities case, supra*, Mr. Justice Harlan says that—

> The Constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. * * * But this court has heretofore adjudged * * * that liberty of contract did not involve a right to deprive the public of the advantages of free competition in trade and commerce. Liberty of contract does not imply liberty in the corporation or individual to defy the national

> will when legally expressed. Nor does the enforcement of a legal enactment of Congress infringe in any proper sense the general inherent right of everyone to acquire and hold property. That right, like all other rights, must be exercised in subordination to the law.

And in *Erie* v. *Williams* (233 U. S. 685), this court said:

> But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—can not be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public.

The act making the initial carrier liable for damage to property in transportation (*Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186), and the Federal Employers' Liability Act, impose a much more direct and substantial burden upon the liberty of corporations to contract with respect to their own business than does Section 7 of the Clayton Act. (See also *United States* v. *Knight, supra; United States* v. *American Tobacco Co.*, 221 U. S. 106.)

This court also holds that—

> The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be

> sustained by demonstrating that it conflicts with some constitutional restraint or that the public welfare is not subserved by the legislation. The legislature is in the first instance the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. * * * Its judgment will not be reviewed "unless unmistakably and palpably in excess of legislative power." (*Erie* v. *Williams, supra.*)

We submit that the petitioner has failed to demonstrate that the act is not reasonably calculated to preserve freedom of competition in interstate commerce, or that it unduly limits the rights of corporations.

V

The act as construed by the Commission does not confer jurisdiction over manufacture or the ownership of property

Counsel for the petitioner next make the point that manufacture is not commerce, and contend, as we understand their brief, that because the Commission's order requires the divestiture of the stock of the Moultrie and Andalusia companies, together with the properties and assets of those companies, there is an attempted regulation of manufacturing operations and of property. This we respectfully submit is not correct. Congress may require that restraints on competition in interstate commerce be removed, and if such restraints can be removed

only by the sale or disposition by the parties of stock in corporations or of properties, this may be constitutionally required.

It is settled law that where properties are purchased as a part of a plan to monopolize or to restrain interstate trade the combination or monopoly may be dissolved by compelling such purchasers to sell the properties acquired for an illegal purpose. This has been established since the decree in the case of *U. S.* v. *American Tobacco Company.* In order to dissolve that combination new corporations were organized, to which plants and properties formerly owned or controlled by the combination were transferred and competing companies in various lines thus created. (Decrees and Judgments in *Federal Anti-Trust cases,* Government Printing Office, August 26, 1918, pp. 165–191.) In *U. S.* v. *International Harvester Company* (214 Fed. 987), where the illegal combination had been formed through the consolidation of the physical properties and good will of the principal competing harvester companies, the decree required "that the business and assets of the International Harvester Co. be divided in such manner and into such number of parts of separate and distinct ownership as may be necessary to restore competitive conditions." (Judgments and Decrees in *Federal Anti-Trust cases,* p. 340.) Similar disposals of share capital or other property have been decreed in other cases. (*United States* v. *Reading Co.,* 253 U. S. 26; *Con-*

tinental Insurance Co. v. United States, Reading Co. et al., 259 U. S. 156.)

While the Sherman Act is therefore construed as reaching stock and properties, Congress in passing it was not regulating the ownership of property or of manufacturing operations. The disposition of the properties is a necessary incident to the restoration of competitive conditions, the only effective means of removing the restraint upon competition.

In the instant case the Commission does not claim that Congress in the Clayton Act has conferred upon it or upon the courts power to regulate the ownership or disposition of property or to regulate manufacture. We do claim that an order to dispose of the stock acquired may carry with it a requirement to dispose of the assets and properties which the stock represents. This question has been discussed in the Respondent's brief in the *Thatcher case* and will not be enlarged upon here.

VI

The act does not discriminate between corporations and natural persons in such manner as to deprive corporations of liberty or property without due process of law

Having sought to establish that the statute applies to and covers "only situations wherein the facts, judicially ascertained and determined, show that corporate ownership of stock is so postured as to create a direct and substantial obstruction in the current of interstate commerce and which obstruc-

tion will be removed from such interstate current by change in the ownership of such stock" (Petitioner's brief, p. 23), petitioner contends that the construction given to the act by the Commission would raise the following questions:

> 1. May Congress prohibit a property owner from selling his property and going business to a competitor, merely because the effect of such sale "may be to substantially lessen competition between" the seller and the buyer?
>
> 2. If this question should be answered in the affirmative, then may Congress forbid a corporation from openly acquiring the property and going business of a corporate competitor, under circumstances wherein the transaction would be inoffensive to the law if seller or buyer, or both, were individuals—the respective positions in the trade, and the instrumentalities used in commerce of the respective corporate and individual vendors and vendees being precisely the same? In other words, may the law forbid to corporations, solely because they are corporations, what it permits to individuals in identical circumstances?

It is submitted that no such question as that presented by these two paragraphs can be predicated on the statute or on any construction placed upon it by the Commission as disclosed by the record in this case.

The statute prohibits the purchase by one corporation engaged in interstate commerce of the

share capital of a competing corporation, etc., where the effect may be to substantially lessen competition between two or more companies. The Act is directed at the purchase of stock. It leaves individuals free to purchase stock in two or more corporations. It leaves corporations free to purchase stock in other corporations where the effect is not to substantially lessen competition between them. It leaves corporations free to purchase the assets, properties, and business as going concerns of other corporations to the extinction of competition between them, if nothing else appears than a purchase of properties.

But a corporation may not purchase the stock of a competitor or competitors, assume control and direction of the corporation in such manner as to eliminate competition, and then, through the use of the stock purchased, convey to itself the properties, assets, and good will of the corporations. The fact that the acquiring company has been able to take over the properties before a complaint can be filed by the Commission and a hearing had does not deprive the Commission of jurisdiction over the violation of law. In such a case, as where the properties have not been transferred, the gist of the Commission's case is the illegal acquisition of the share capital and the remedy is divestiture. An order to sell the stock in such manner that when sold it shall carry with it properties, good will, and other assets as a going concern is within a complaint charging an illegal acquisition of stock.

Petitioner can not by the transfer of properties after purchase of stock distort the statute or place the Commission in the false position of assuming jurisdiction over mere acquisitions of property by a corporation, or of seeking to prevent a corporation from openly buying the property and going business of a competitor.

We submit, therefore, that while a question of deprivation of liberty or property without due process of law may be predicated on the statute and on the record in this case, it is not the question as stated by counsel for petitioner. The question, we submit, should be reframed and as so reframed be stated in substance as follows:

May Congress, without violating the due process clause of the Federal constitution, forbid corporations to purchase stock in competing corporations where the effect may be to substantially lessen competition between such corporations, while not prohibiting natural persons from acquiring the stocks in corporations competing in such commerce? May Congress constitutionally prohibit to corporations in this respect what it permits natural persons to do? The point which would be here raised is, "Has Congress in framing the prohibitions of the statute so discriminated between corporations and natural persons as to deprive the former of liberty or property without due process of law?" If its selection of corporations as a class to which the law should be applied was reasonable and based upon some difference which bears a reasonable and

just relation to the end sought to be attained, its action is constitutional.

The bases for classification which will avoid constitutional objection on the score of undue discrimination are covered by the following general principles which have been outlined by decisions of this Court:

> 1. The statute may not constitutionally discriminate substantially between those who are similarly situated with reference to the regulation and its consequences. (*Tegola* v. *Hawaii*, 226 U. S. 184.) The legislature should take into account varying conditions in the respective localities affected by the Act. (*Id.* p. 191.)
>
> 2. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the 14th Amendment allows it to be dealt with, although otherwise merely logically not distinguishable from others not embraced in the law. (*Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160, 161.)
>
> 3. The discretion granted to the legislative power is very wide. (*Mutual Loan Co.* v. *Martell*, 222 U. S. 225, 235.)
>
> 4. It is not necessary that the classification be the best one possible. (*Heath & Milligan Mfg. Co.* v. *Worst*, 207 U. S. 338, 354, 355.)

The classification here consists in the application of Section 7 exclusively to corporations and the omission from the prohibition of firms and individuals who may be engaged in commerce and whose

purchases of stock might in theory substantially lessen competition between the corporations. Such classification between corporations and individuals is not an arbitrary one or without foundation both in law and in fact.

It is submitted that a classification which places corporations in a different class with natural persons with respect to the purchase of stock in other corporations is not an arbitrary classification. At the common law in many of the states corporations could not purchase stock in other corporations, though there were no such limitations on the right of natural persons to purchase stock in one or more corporations. Vice Chancellor Stevenson in *Robotham* v. *Prudential Ins. Co.* (64 N. J. Eq. 673, 851) summarizes the state of the common law on this subject, as follows:

> There is authority for the proposition that corporations are under no disability at common law to purchase and hold the stock of other corporations. In re *Barned's Banking Co.*, 3 Ch. App. 105, 113; *Royal Bank of India's case*, 4 Ch. App. 252, 257; *Booth* v. *Robinson*, 55 Md. 419; *Davis* v. *Light Co.*, 77 Md. 35, 25 Atl. 982. There is also authority for the proposition that corporations can not acquire and hold the stock of other corporations without express authorization under a statute; the origin of the prohibition, whether in the doctrine of ultra vires or in some positive rule of law based on public policy, being often left in uncertainty. See

Noyes, Inter. Corp. Rel. pp. 264, 265; 1 Cook, Corp. Par. 315; 1 Thomp. Corp. Par. 1102; 7 Thomp. Corp. Par. 8353, 8354; 7 Am. & Eng. Enc. Law, pp. 810–816, and cases cited. There are also dicta, at least, sustaining the proposition that corporations are prohibited by a general rule of positive law, based on public policy, entirely distinct from the doctrine of ultra vires, from purchasing stock in other corporations. *Oelbermann* v. *Railroad Co.*, 77 Hun. 332, 335, 29 N. Y. Supp. 545; *Franklyn Bank of Cincinnati* v. *Commercial Bank of Cincinnati*, 36 Ohio St. 350, 38 Am. Rep. 594; *Franklyn Co.* v. *Lewiston Inst. for Savings*, 68 Me. 43, 56, 28 Am. Rep. 9. There is also authority for the proposition that a rule of law based on public policy or on the doctrine of ultra vires, or on both, prohibits a corporation from acquiring the stock of another corporation where the business of one or both corporations has certain characteristics, or where the purchase is made for certain purposes. 1 Cook, Corp. Par. 315; *Louisville & N. R. Co.* v. *Kentucky*, 161 U. S. 677, 698, 16 Sup. Ct. 714, 40 L. Ed. 849; *People* v. *Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 8 L. R. A. 497, 17 Am. St. Rep. 319.

Swift & Company is organized under the law of Illinois. In *Dumbar* v. *Am. Telp. & Telg. Co.* (224 Ill. 9) it was held that a foreign corporation could not legally purchase a majority of the shares of stock of a competing Illinois corporation for the purpose of controlling the latter and thereby pre-

venting competition between the corporations. See also in this connection *Central Life Ins. Co.* v. *Smith*, 236 Fed. 170.

The Constitution of Georgia, under the laws of which the Moultrie Co. was organized (Par. 4, Sec. 2, Art. 4), provides:

> The General Assembly shall have no power to authorize any corporation to buy shares of stock in any other corporation in this state or elsewhere, or to make any contract or agreement whatever with any such corporation which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses or to encourage monopoly.

In *Hamilton* v. *Savannah F. & W. Ry. Co.* (49 Fed. 412) the court cites this section of the Georgia Constitution and says, "It has long been true that before one corporation can acquire the stock of another corporation there must be express authority given for it by the state. At common law there was no such power." See also *Georgia R. R. Co.* v. *Collins* (49 Ga. 582). In Alabama, where the Andalusia Co. is organized, the law is the same. (*Memphis & C. R. Co.* v. *Wood*, 7 So. Rep. 108; *Com. Fire Ins. Co.* v. *Board*, 99 Ala. 1, 11), and the same rule obtains in other jurisdictions unless modified by statute, and in the Federal Courts. (*De La Vergne* v. *German Savings Institution*, 175 U. S. 40; *Elkins* v. *Camden R. R. Co.*, 36 N. J. Eq. 5; *Pearson* v. *Concord Ry.*, 62 N. H. 537; *Marble Co.* v. *Harvey* 92 Tenn. 115.)

We respectfully submit that the restoration in a very limited measure of the rule of the common law as a regulation of interstate commerce, without applying the same rule to natural persons, was a proper exercise of legislative discretion. To limit the right of corporations engaged in commerce to purchase the stock of other corporations so engaged only where the corporations are competing and only where the acquisition may substantially lessen competition between the corporations, is not to "control the *mere* acquisition or the *mere* ownership of stock in a stated corporation," and the statement of Justice Harlan in the *Northern Securities case* (page 48 of petitioner's brief) has no application here. On this point Justice Brewer in his concurring opinion in that case said (p. 362):

> A corporation, while by fiction of law recognized for some purposes as a person and for purposes of jurisdiction as a citizen, is not endowed with the inalienable rights of a natural person. It is an artificial person, created and existing only for the convenient transaction of business. In this case it was a mere instrumentality by which separate railroad properties were combined under one control. That combination is as direct a restraint on trade by destroying competition as the appointment of a committee to regulate rates. The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock.

The classification has abundant basis in fact, and the Act is so clearly adapted to accomplish the end desired—preservation of competition in interstate commerce—that the relation of the classification to that end would appear to be clear.

Persons engaging in interstate trade of any magnitude almost universally secure the advantages of the corporate form of organization. The history of litigation with respect to restraint of interstate commerce in this country probably does not show a case wherein a combination jeopardizing competition has been carried out by means of an individual as the owner of stock in various competing companies. "Corporations are the instrumentalities commonly used by those engaged in large enterprises. They lend themselves handily to activities of large proportions. Their control can be readily acquired." (Opinion below, R. 1608.) Such being the case, Congress did not include natural persons in the prohibition of the section. To have done so would have served no public interest and would have been idle.

The distinction made between natural persons and corporations in statutes regulating competition has been recognized by this court as valid in *Mallinckrodt* v. *St. Louis*, 238 U. S. 41. This court in upholding the validity of a Missouri statute said:

> It is insisted that to require an affidavit of innocence by the managing officers of corporations is an unjust discrimination against

them, and hence repugnant to the "equal protection" provision, because individuals, partnerships, and associations of individuals, although equally within the law against monopolies (Secs. 10299, 10303) are not required to make similar exculpatory affidavits. The question is whether, for the purpose of such a disclosure as is required by Section 10322, corporations may be placed in one class and individuals in another. The answer is not at all difficult. Of course, corporations may not arbitrarily be selected in order to be subjected to a burden to which individuals would as appropriately be subject. Classification must be reasonable; that is to say, it must be based upon some real and substantial distinction having a just relation to the legislative object in view. But here, as in other questions of alleged conflict with constitutional requirements, every reasonable intendment is in favor of the validity of the legislation under attack. Corporations, unlike individuals, derive their very right to exist from the laws of the State; they have perpetual succession; and they act only by agents, and often under circumstances where the agency is not manifest. The legislature may reasonably have concluded that, for these and other reasons, corporations are peculiarly apt instruments for establishing and effectuating those trusts and combinations against which the prohibition of the statute is directed, that their business affiliations are not so easily

> discovered and traced as those of individuals, and that there was therefore a peculiar necessity and fitness in annually requiring from each corporation a solemn assurance of its nonparticipation in the prohibited practices. The Act is, in this respect, fairly within the wide range of discretion that the States enjoy in the matter of classification. *Missouri, Kansas & Texas Ry.* v. *Cade*, 233 U. S. 642, 650, and cases cited.

In *Prudential Ins. Co.* v. *Cheek* (259 U. S. 530) this court again recognizes the propriety of imposing upon the corporations different obligations than are imposed upon individuals.

In *Central Lumber Co.* v. *S. Dak.* (226 U. S. 157, 161) this court upheld a state statute which prohibited any person from discriminating in prices of commodities sold as between different sections and communities, over the objection that the statute selected a class of dealers doing business at more than one place and imposed a burden upon them not imposed upon dealers having but one place of business and in favor of the latter. The court said:

> If the legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive and for that reason did more harm than good in their State, and that there was no other case of frequent occurrence where the same could be said, we can not review their economies or their facts.

VII

There is in the statute no unconstitutional delegation of judicial powers

In its Subdivision III petitioner attributes to the Federal Trade Commission the claim that it has implied judicial power which petitioner declares without foundation. Respondent neither claims nor exercises judicial power within the meaning of the Constitution. In fact, petitioner itself refutes the charge it prefers when it insists that its interpretation of Sections 7 and 11 will save them from constitutional infirmity, and then proceeds to outline a construction which authorizes the Commission, under Section 11 to require divestiture of stock, after ascertainment of the necessary facts in accordance with the statutory method, which nowhere except on review invests the court with any jurisdiction whatever, and even then circumscribes it with the conclusiveness of respondent's findings if supported by testimony. There is no challenge of the power of the Commission to remove by order the condition proclaimed by Congress to be an obstruction to the channels of interstate commerce.

The Constitution provides no greater protection and no more inviolable right in the ownership of physical property than in that of stock, which often evidences ownership of vast aggregations of wealth in all forms of property. Acknowledgment that an order to divest the one is constitutional is equivalent to the admission that inclusion of physical

property in the order involves no exercise of judicial power within the meaning of the Constitution. Administrative duties may and often do involve the exercise of power essentially judicial in its nature but in no sense judicial power of the United States, which Congress may neither exercise nor delegate.

CONCLUSION

It is respectfully submitted that the judgment of the Court below should be affirmed.

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Vol. I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 231

272

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SWIFT & COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED OCTOBER 19, 1925

CERTIORARI GRANTED NOVEMBER 23, 1925

(31,504)

(31,504)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 781

SWIFT & COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE UNITED STATES CIRCUIT OF APPEALS, Filed Oct 1922.

For the Seventh Circuit.

October Term, A. D. 1922.

Swift & Company,
Petitioner,
vs.
Federal Trade Commission,
Respondent.

Petition to Review Order of Federal Trade Commission.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Swift & Company, petitioner, respectfully represents that it is a corporation duly organized and existing under the laws of the State of Illinois, having is principal office in this Circuit at the City of Chicago, Illinois, where it resides and carries on business.

Petitioner further represents that on August 3, 1922, the Federal Trade Commission, in a certain proceeding entitled "Federal Trade Commission v. Swift & Company—Docket 453," entered a certain order wherein and whereby petitioner, Swift & Company, shall:

"(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company which have been held, controlled and operated by respondent and its employes and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations: and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by any one for its use and benefit, of the Moul-

trie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employe or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and Desist from further engagements in unfair methods of competition in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and in so ceasing and desisting, shall Cease and Desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also Cease and Desist from further holding, owning, controlling, and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and/or control of the capital stock of either said Moultrie Packing Company or said Andalusia Packing Company and/or through the control and/or ownership of the properties, physical assets and businesses of either of said named corporations.

It Is Further Ordered, that the said respondent, Swift and Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth."

Petitioner files this petition to obtain a review of the aforesaid order to cease and desist, so entered by the Federal Trade Commission on August 3, 1922, in its proceeding against petitioner entitled, "Federal Trade Commission v. Swift & Company—Docket 453."

Wherefore, petitioner prays that a certified copy of this petition be forthwith served by the Clerk of this Court upon said Federal Trade Commission, to the end that said Com-

mission may be required, in conformity with the statute, to certify and file in this Court a transcript of the entire record in the proceeding aforesaid wherein said order of August 3, 1922 was entered, including all the testimony taken and the report and order of the Commission; and that upon review of said order in and by this Honorable Court, the said order of the Federal Trade Commission be set aside.

SWIFT & COMPANY,
By ALBERT H. and HENRY VEEDER,
JAMES M. SHEEAN,
FRANK L. HORTON,
Its Attorneys.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

October Term, A. D., 1922.

Swift & Company, *Petitioner,* vs. Federal Trade Commission, *Respondent.*	Petition to Review Order of Federal Trade Commission.

Now this day comes Swift & Company, by Albert H. and Henry Veeder, James M. Sheean and Frank L. Horton, its attorneys, and presents a petition to review an order to cease and desist entered against the petitioner by Federal Trade Commission on the 3rd day of August, 1922, in a cause lately pending before said Commission entitled, "Federal Trade Commission v. Swift & Company—Docket 453."

It is now here ordered that the said petition to review be filed and that a certified copy of said petition be forthwith served by the Clerk of this Court upon said Federal Trade Commission, and that said Federal Trade Commission, upon service of such copy, forthwith certify and file in this Court a transcript of the record of said cause.

Enter BAKER,
Judge.

(Endorsed) No. 3215 In the United States Circuit Court of Appeals for the Seventh Circuit. October Term, A. D., 1922. Swift & Company, Petitioner v. Federal Trade Commission, Respondent. Petition to Review Order of Federal Trade Commission Attorneys:—Albert H. and Henry Veeder 76 West Monroe Street, Tel: Central 6000. James M. Sheean, 105 So. LaSalle Street, Tel: Central 8295. Frank L. Horton, Union Stock Yards, Tel: Yards 4200. Filed Oct 24 1922 Edward M. Holloway Clerk

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24, 1923.

1 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

I, Otis B. Johnson, Secretary of the Federal Trade Commission, do hereby certify that hereunto annexed is a full, true and correct transcript of the proceedings had before the Federal Trade Commission in the above entitled case, except the testimony and exhibits, which are bound separately.

That this transcript is certified to the United States Circuit Court of Appeals for the Seventh Circuit, by reason of the filing in the said Court of a petition for review of the Order to Cease and Desist and to Divest Stock entered by said Federal Trade Commission under date of August 3, 1922.

OTIS B. JOHNSON,
OTIS B. JOHNSON,
Secretary, Federal Trade Commission.

(Seal)

(Endorsed) Filed Sep 24 1923 Edward M. Holloway Clerk

FEDERAL TRADE COMMISSION.

Docket No. 453.

Section I.

Copy of Resolution authorizing Complaint.

Copy of Complaint.

3 UNITED STATES OF AMERICA. Dated No 1919.

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 24th day of November, A. D., 1919.

Present:

John Franklin Fort, Chairman,
Victor Murdock,
Huston Thompson,
William B. Colver,
Commissioners.

Federal Trade Commission
vs.
Swift & Company. } Docket No. 453.

Complaint in the matter of the alleged violation of Section 5 of an Act of Congress approved September 26, 1914 and of Section 7 of an Act of Congress approved October 15, 1914.

Whereas: The Federal Trade Commission has reason to believe that Swift & Company, has violated and is violating the provisions of Section 5 of an Act of Congress, approved September 26, 1914 and of Section 7 of an Act of Congress approved October 15, 1914, and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, therefore be it

Resolved: That the Federal Trade Commission issue and serve upon the said Swift & Company, its complaint, stating its charges in that respect in substantially the form hereunto annexed, and be it

Further Resolved: That notice be given to the said Swift & Company, as required by law, that the charges of said complaint will be heard by the Commission at its offices in the Federal Trade Commission Building, in the City of Washington, D. C., on the 12th day of January, A. D., 1920, at 10:30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached.

Adopted by the Commission.

(Signed) J. P. YODER.
Secretary.

(Seal)

aint, d Nov. 1919.

4 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 24th day of November, A. D., 1919.

Present:

John Franklin Fort, Chairman,
Victor Murdock,
Huston Thompson,
William B. Colver,
Commissioners.

Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

Complaint in the matter of the alleged violation of Section 7 of an Act of Congress approved October 15, 1914, and Section 5 of an Act of Congress approved September 26, 1914.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

Paragraph One: That the respondent, Swift & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the City of Chicago, in said State, and has been and is now and at all times hereinafter mentioned engaged in the business of slaughtering live stock, and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, including leather; said products, by-products and commodities being sold by respondent in the

various States of the United States, the territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from one or more of said States and territories through and into other States and Territories of the United States and the District of Columbia.

Paragraph Two: That the Moultrie Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at Moultrie, in said State, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported when sold, from the State of Georgia, through and into other States of the United States, the territories thereof and to the District of Columbia, and prior to June 1, 1917, was in direct competition with respondent and other persons, partnerships and corporations similarly engaged.

5 Paragraph Three: That Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" is and provides, in part, as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Paragraph Four: That on or about June 1, 1917, the respondent purchased 956 shares of the total of 966 shares of the capital stock of said Moultrie Packing Company issued and outstanding and caused the same to be transferred on the ployees of the respondent, who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter on or about the 15th day of August, 1917, the respondent caused its said officers and employees who held the said stock to hold a stockholders' meeting of said company and at such meeting to elect as directors of said Moultrie Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and

properties of the said Moultrie Packing Company and caused its said officers and employees, who were the directors and stockholders thereof, to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of the Moultrie Packing Company among the stockholders of said company, and a sale of the remaining assets, including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer was authorized by the Board of Directors of said Moultrie Packing Company composed of officers and employees of the respondent, on or about November 3, 1917, and was ratified at a special meeting of the stockholders of said company, all of whom were officers and employees of the respondent, on or about June 5, 1918; that the effect of all the foregoing was to substantially lessen competition between respondent and said Moultrie Packing Company; to restrain commerce in the section and community of and adjacent to Moultrie, Georgia, and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by the respondent and said Moultrie Packing Company.

Paragraph Five: That the transfer and issue of said stock of the said Moultrie Packing Company to officers and employees of the respondent, the election of employees and officers of respondent as directors and officers of said Moultrie Packing Company and the pretended sale by such officers of the physical assets and properties of said Moultrie Packing Company to the respondent were intended by the respondent to conceal the acquisition by it of the said stock of said Moultrie Packing Company and were intended as a device to evade the provisions of Section 7 of the said Act of Congress approved October 15, 1914.

6 II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs One, Two and Four of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph One, Two and Four are incorporated herein by reference and adopted as a part of the allegations of this count.

III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph One of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph One is incorporated herein by reference and adopted as a part of the allegations of this count.

Paragraph Two: That the Andalusia Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Alabama, with principal place of business at Andalusia, in said State, having capital stock of $133,250, divided into shares of par value of $50 each, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products to be transported when sold, from the State of Alabama, through and into other States of the United States, the territories thereof and the District of Columbia, and prior to July 24, 1917, was in direct competition with respondent and other persons, partnerships and corporations, similarly engaged.

Paragraph Three: That section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides, in part, as follows:

7 "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the

stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Paragraph Four: That on or about July 24, 1917, the respondent purchased all of the capital stock of said Andalusia Packing Company, issued and outstanding, and caused the same to be transferred on the books of said company, and issued to certain officers and employees of the respondent who thereby became and remained record holders of said stock but who held the same for the use and benefit of the respondent; that thereafter on or about the 24th day of July, 1917, the respondent caused its said officers and employees who held said stock to hold a stockholders' meeting of said company and at such meeting to elect as directors of said Andalusia Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and properties of the said Andalusia Packing Company and caused its officers and employees who were the directors and stockholders thereof to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of said Andalusia Packing Company among the stockholders of said company and the sale of the remaining assets including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer were authorized by the board of directors of said Andalusia Packing Company composed of officers and employees of the respondent on or about March 30, 1918; that on or about June 29, 1916, said board of directors composed as aforesaid of officers and employees of respondent resolved to liquidate said Andalusia Packing Company; that the effect of all the foregoing was to substantially lessen competition between the respondent and said Andalusia Packing Company, to restrain commerce in the section and community of and adjacent to Andalusia, Alabama, and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by respondent and said Andalusia Packing Company.

Paragraph Five: That the transfer and issue of said stock of said Andalusia Packing Company to officers and employees of the respondent, the election of officers and employees of

respondent as directors and officers of the said Andalusia Packing Company and the pretended sale by such officers of the physical assets and properties of the said Andalusia Packing Company were intended by the respondent to conceal the acquisition by it of the said stock of said Andalusia Packing Company and were intended as a device to evade the provisions of Section 7 of said Act of Congress approved October 15, 1914.

IV.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an
8 Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph One of count I and paragraph Two and Four of count III of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs are incorporated herein by reference and adopted as a part of the allegations of this count.

V.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, herein referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in

paragraph One of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph One is incorporated herein by reference and adopted as a part of the allegations of this count.

Paragraph Two: That England Walton & Company Inc., at the time hereinafter mentioned was a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at Philadelphia, in the State of Pennsylvania, with capital stock of $1,250,000, and was engaged in the business of conducting tanneries and the production of various grades of leather and by-products throughout the various States of the United States, the territories thereof, and the District of Columbia, causing the same to be transported when sold, from one or more of said States, through and into various other States and territories, and prior to September 29, 1917, was in direct competition with respondent and other persons, partnerships and corporations similarly engaged. That certain branches of the business of said England Walton & Company Inc. were conducted through the instrumentalities of the following named subsidiaries: The Querin Tannery, The Carroll Oak Tannery Company, The Chilhowee Extract Company, The Junalushu Leather Company, The Unaka Tanning Company, The J. P. Houck Tanning Company, The Schloser Leather Company, and England Walton Company of Massachusetts; which subsidiaries had capital stock aggregating $545,000.

Paragraph Three: That on September 29, 1917, said respondent acquired one-half of the capital stock of said England Walton Company, Inc. and has since owned and controlled the same. That the remaining one-half of the capital stock of said England Walton & Company Inc. was ac-

9 quired by the firm of Mulford & Bryan, to whom respondent loaned $500,000 to enable said Mulford & Bryan to finance the transaction, respondent taking as security for said loan the said stock purchased by said Mulford & Bryan: and has since held said stock for voting and other purposes; that as a result of the acquisition of said stock, as aforesaid, there was vested in respondent the complete control of the business of said England Walton & Company Inc. including the business of its said subsidiaries, and competition between the respondent and said England Walton & Company, Inc. was and is completely restrained, and respondent has acquired a virtual monopoly in the interstate sale of leather in the sections and communities which, prior to September 29, 1917, were served by said England Walton & Company, Inc., and its subsidiaries.

VI.

And the Federal Trade Commission having reason to believe from a preliminary investigation made by it that Swift & Company herein referred to as respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs One of count I and paragraphs Two and Three of count V of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs One, Two and Three are incorporated herein by reference and adopted as a part of the allegations of this count.

Now, Therefore, Notice Is Hereby Given You, the said Swift & Company, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the City of Washington, D. C., on the 12th day of January, A. D., 1920, at 10:30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you to cease and desist from the violations of law charged in this complaint, and requiring said respondent to divest itself of the stock or share capital unlawfully held in said Moultrie Packing Company, the Andalusia Packing Company and the England Walton & Company, Inc.

And you will further take notice that within thirty (30) days after the service of this complaint, you are required to file with the Commission an answer in conformity with Rule III of the Rules of Practice before the Commission.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its Secretary, and its official seal to be affixed hereto, at the City of Washington, D. C., this 24th day of November, A. D. 1919.

By the Commission.

(Signed) J. P. YODER,
Secretary.

(Seal)

(Signed) CLAUDE R. PORTER,
Chief Counsel for the Commission.

10 FEDERAL TRADE COMMISSION

Docket No. 453

Section II.

Copy of Answer of Respondent,

Copy of Amendment to Answer.

11 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

Federal Trade Commission,
vs.
Swift and Company,
Respondent.
} Docket No. 453

Complaint in the matter of the alleged violation of Section 5 of an Act of Congress, approved September 26, 1914, and Section 7 of an Act of Congress, approved October 15, 1914.

ANSWER OF RESPONDENT.

Now comes Swift and Company, a corporation, respondent herein, and answering the charges in said complaint says:

I.

Respondent admits the allegations contained in Paragraph One of Count I of the complaint, except the allegation that respondent produces and deals in leather. Respondent alleges that it is not now engaged in the production of or dealing in leather.

II.

Respondent admits that Moultrie Packing Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal place of business at Moultrie, in said State. Respondent alleges that

said Moultrie Packing Company, from and after its organization and up to November 3, 1917, was engaged in the business of slaughtering live stock, principally hogs, and of producing and dealing in meats and certain by-products arising out of the slaughtering of said live stock and that said Moultrie Packing Company caused certain of said products to be transported from the State of Georgia through and into certain other States of the United States. Respondent states that prior to June 1, 1917, said Moultrie Packing Company was in competition in a limited way with respondent and other persons, partnerships and corporations similarly engaged, and respondent alleges that said competition between said Moultrie Packing Company and respondent, and other persons, partnerships and corporations similarly engaged, continued and was not substantially lessened up to November 3, 1917.

Except as admitted above, respondent denies each and all of the allegations contained in Paragraph Two of Count I of said complaint.

III.

Respondent admits the allegation contained in Paragraph Three of said complaint.

12

IV.

Respondent states that on or about June 1, 1917, the respondent purchased nine hundred fifty-six (956) shares of the total of nine hundred sixty-six (966) shares of the capital stock of said Moultrie Packing Company issued and outstanding, and that during the period June 1, 1917, and November 3, 1917, respondent caused nine hundred fifty-one (951) of said nine hundred fifty-six (956) shares of stock to be transferred on the books of the company and reissued to certain officers and employees of respondent, who held the said stock for the use and benefit of the respondent. Respondent states that at a stockholders' meeting of said Moultrie Packing Company, held August 13, 1917, certain officers and employees of respondent were elected officers and directors of said Moultrie Packing Company. Respondent states that on November 3, 1917, the Board of Directors of said Moultrie Packing Company adopted a resolution authorizing and directing the President of the company to sell all the business

and property of the company, of every description and wheresoever situated, to this respondent at the book value of said property as shown at the close of business on November 3, 1917, and the assumption by this respondent of all the debts, contracts, obligations and liabilities of the said Moultrie Packing Company at the close of business on said date; that the said sale was thereafter effected and the same was thereafter ratified by the stockholders of said Moultrie Packing Company.

Respondent denies that the acquisition of said shares of stock of said Moultrie Packing Company by the respondent had the effect of substantially lessening competition between respondent and said Moultrie Packing Company. Respondent denies that the acquisition by respondent of the said shares of stock and all of the assets of said Moultrie Packing Company, as aforesaid, unlawfully restrained commerce in the section and community of and adjacent to Moultrie, Georgia, and elsewhere, as charged in said complaint. Respondent denies that the acquisition by respondent of said shares of stock and the assets of the said Moultrie Packing Company, as aforesaid, tended to create a monopoly in the lines of commerce carried on by the respondent and said Moultrie Packing Company.

Except as above admitted, respondent denies each and all of the allegations contained in Paragraph Four of Count I of said complaint.

V.

Respondent denies that the transfer and issue of said stock of said Moultrie Packing Company to officers and employees of this respondent, and the election of employees and officers of said respondent as directors and officers of said Moultrie Packing Company, and the sale of the assets and properties of said Moultrie Packing Company to the respondent, as hereinbefore set forth, were intended by the respondent to conceal the acquisition by it of the said stock of said Moultrie Packing Company; and respondent denies that the said transfer and said issue of said stock of said Moultrie Packing Company to officers and employees of the respondent, and the election of employees and officers of respondent as directors and officers of said Moultrie Packing Company, and the sale of the assets and properties of said Moultrie Pack-

ing Company to respondent were intended as a device to
13 evade the provisions of Section 7 of the said Act of Congress, approved October 15, 1914.

VI.

Answering Count II of said complaint, respondent denies that it has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as charged in Count II of said complaint, and this respondent relies upon the matters and things set out in Paragraphs II, III, IV and V of this answer to the same extent as though the allegations of said Paragraphs II, III, IV and V were here set out at length, and said Paragraphs II, III, IV and V are hereby incorporated by reference and adopted as respondent's answer to the charges contained in Count II of said complaint.

VII.

Respondent admits the allegations contained in Paragraph One of Count I of said complaint, as incorporated by reference and adopted as part of the allegations of Count III of said complaint, except the allegation that respondent produces and deals in leather. Respondent alleges that it is not now engaged in the production of or dealing in leather.

VIII.

Respondent admits that the Andalusia Packing Company was a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Andalusia in said State, having a capital stock issued and outstanding of the value of One Hundred Thirty-three Thousand Two Hundred and Fifty Dollars ($133,250.00), divided into shares of the par value of Fifty Dollars ($50.00) each. Respondent alleges that said Andalusia Packing Company from and after its organization and up to March 30, 1918, was engaged in the business of slaughtering live stock, principally hogs, and of producing and dealing in meats and certain by-products arising out of the slaughtering of said live

stock and that said Andalusia Packing Company caused certain of said products to be transported from the State of Alabama through and into certain other states of the United States. Respondent states that prior to July 24, 1917, said Andalusia Packing Company was in competition in a limited way with respondent and other persons, partnerships and corporations similarly engaged, and respondent alleges that said competition between said Andalusia Packing Company and respondent, and other persons, partnerships and corporations similarly engaged, continued and was not substantially lessened up to March 30, 1918.

Except as admitted above, respondent denies each and all of the allegations contained in Paragraph Two of Count III of said complaint.

IX.

Respondent admits the allegation contained in Paragraph Three of Count III of said complaint.

14 X.

Respondent states that on or about July 24, 1917, the respendent purchased all of the outstanding capital stock of said Andalusia Packing Company and caused said stock, with the exception of One Hundred (100) shares to be transferred on the books of the company to employee of respondent, and that from and after the purchase of said outstanding capital stock of said Andalusia Packing Company and until its dissolution, the said stock was held for the use and benefit of respondent. Respondent states that on March 30, 1918, the Board of Directors of said Andalusia Packing Company, after setting aside the sum of Seventeen Thousand Dollars ($17,000.00) as a reserve fund for payment of federal taxes, declared a dvidend of Ninety-seven Thousand Two Hundrd Seventy-six Dollars and Fourteen Cents ($97,276.14), payable out of surplus of the Andalusia Packing Company to the stockholders of record at the close of business March 30, 1918, and at the same meeting, the Board of Directors of the Andalusia Packing Company adopted a resolution accepting the offer of this respondent to purchase all of the property and business of the Andalusia Packing Company at the book value thereof at the close of business on Saturday, March 30, 1918, for cash and the assumption

of the debts, liabilities and obligations of the Andalusia Packing Company. Respondent states that thereafter the purchase by respondent of the business and physical property, including the plant, fixtures and machinery, of the Andalusia Packing Company was consummated in accordance with said resolution and that thereafter the Andalusia Packing Company was liquidated and dissolved. Respondent denies that the acquisition by it of the outstanding capital stock of the Andalusia Packing Company as aforesaid had the effect of substantially lessening competition between the respondent and said Andalusia Packing Company. Respondent denies that the acquisition by respondent of said shares of stock and the business and physical property, including the plant, fixtures and machinery of the Andalusia Packing Company unlawfully restrained commerce in the section and community of and adjacent to Andalusia, Alabama, and elsewhere, as charged in the complaint. Respondent denies that the acquisition by respondent of said shares of stock and of the business and physical property, including the plant, fixtures and machinery of the Andalusia Packing Company tended to create a monopoly in the lines of commerce carried on by respondent and said Andalusia Packing Company.

Except as above admitted, respondent denies each and all of the allegations contained in Paragraph Four of Count III of said complaint.

XII.

Respondent denies that the transfer and issue of said stock of the Andalusia Packing Company to employes of respondent, and the election of employees of saind respondent as directors and officers of said Andalusia Packing Company, and the sale of the assets and properties of said Andalusia Packing Company to the respondent, as hereinbefore set forth, were intended by the respondent to conceal the acquisition by it of the said stock of said Andalusia Packing Company, and respondent denies that the said transfer of said issue of said stock of said Andalusia Packing Company to employes to the respondent, and the election of employes of respondent as directors and officers of said Andalusia Packing Company, and the sale of the assets and properties of said Andalusia Packing Company to respondent were intended as a device to evade the provisions of Section 7 of the said Act of Congress, approved October 15, 1914.

XIII.

Answering Count IV of said complaint, respondent denies that it has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commission, to Define its Powers and Duties, and for Other purposes", as charged in Count IV of said complaint, and this respondent relies upon the matters and things set out in Paragraphs VII, VIII, IX, X, XI and XII of this answer to the same extent as though the allegations contained therein were here set out at length and said Paragraph VII, VIII, IX, X, XI and XII are hereby incorporated by reference and adopted as respondents answer to the charges contained in Count IV of said complaint.

XIV.

Answering Count V of said complaint, respondent admits the allegations contained in Paragraph One of Count I of said complaint as incorporated by reference and adopted as part of the allegations of Count V, except the allegation that respondent produces and deals in leather. Respondent alleges that it is not now engaged in the production of or dealing leather.

XV.

Respondent admits that England, Walton & Company, Inc., was, on and prior to September 29, 1917, a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at Philadelphia, in the State of Pennsylvania, with a capital stock of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.00) and was engaged in the business of conducting tanneries and the production of various grades of leather and by-products, and that said England, Walton & Company, Inc., caused said products to be transported, when sold, from one or more of the various States of the United States through and into certain other States of the United States, and on and prior to the date last aforesaid was in direct competition with respondent and other persons, partnerships and cor-

porations similarly engaged; that certain branches of the business of said England, Walton & Company, Inc., were conducted through the instrumentalities of the following named subsidiaries:

Quirin Tanning Company
Carroll Oak Tannery Company
Chilhowee Extract Company
Junaluska Leather Company
Unaka Tanning Company
J. P. Houck Tanning Company
Schlosser Leather Company

and England, Walton Co., of Massachusetts, which subsidiaries had a capital stock aggregating Five Hundred Forty-five Thousand Dollars ($545,000.00).

16 XVI.

Respondent admits that on or about September 29, 1917, it acquired one half of the capital stock of said England, Walton & Company, Inc.; that the remaining one-half of the capital stock of said England, Walton & Company, Inc., was acquired by S. K. Mulford and M. R. Bryan individually, to whom respondent loaned Five Hundred Thousand Dollars ($500,000.00), to enable said Mulford and Bryan to finance the transaction, respondent taking as security for said loan the said stock purchased by said Mulford and Bryan, but respondent denies that it held said stock of Mulford and Bryan at any time for voting and other purposes, except as aforesaid, and denies that it now owns and or controls the one-half of the capital stock of said England, Walton & Company, Inc., acquired by respondent on or about September 29, 1917, having in September, 1919, sold all of said capital stock and its interest therein of every nature, or that as a result of the acquisition of the said stock, as aforesaid, there was vested in respondent the complete control of the business of said England, Walton & Company, Inc., including the business of its said subsidiaries, or that competition between the respondent and said England, Walton & Company, Inc., was and is completely restrained, or that respondent has acquired a virtual monopoly in the interstate sale of leather in the sections and communities which, prior to September 29, 1917, were served by said England, Walton & Company, Inc., and its subsidiaries.

Except as admitted above, respondent denies each and all of the allegations contained in Paragraph Three of Count V of said complaint.

XVII.

Respondent expressly alleges that the purchase of one-half of the capital stock of said England, Walton & Company, Inc., by respondent was lawful, and respondent denies that the effect of such acquisition was to vest in respondent the complete control of the business of said England, Walton & Company, Inc., including the business of its said subsidiaries, or to restrain competition between the respondent and said England, Walton & Company, Inc., or any of its subsidiaries, or that respondent has acquired a virtual monopoly in the interstate sale of leather in the sections and communities which, prior to September 29, 1917, were served by said England, Walton & Company, Inc., and its subsidiaries.

Respondent expressly alleges that it is now engaged in the business of producing and dealing in leather; that it does not hold, own or control, directly or indirectly, as security of otherwise, the capital stock of said England, Walton & Company, Inc., or of any of its said subsidiaries, or of its or their successors or assigns, having sold all interest in said capital stock in September, 1919.

XVIII.

Answering Count VI of said complaint, respondent denies that it has been and is violating the provisions of Section 7 of an Act of Congress, approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," as
17 charged in Count VI of said complaint, and for answer to said charges respondent relies upon the matters and things set out in Paragraphs XIV, XV, XVI, XVII to the same extent as though the allegations of said Paragraphs XIV, XV, XVI and XVII were here set out at length, and said Paragraphs XIV, XV, XVI and XVII are here incorporated by reference and adopted as respondent's answer to the charges contained in said Count VI of said complaint.

XIX.

Wherefore, This respondent having fully answered the charges in said complaint, prays that the same be dismissed.

SWIFT & COMPANY
(Signed) By L. F. SWIFT,
President

Dated this 23d day of
December, 1919.
(Signed) ALBERT H. & HENRY VEEDER
76 West Monroe Street, Chicago, Illinois
Attorneys for Respondent.

18 UNITED STATES OF AMERICA Amendm answe

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 453.

Federal Trade Commission

v.

Swift and Company
Respondent.

AMENDMENT TO ANSWER

In the matter of the alleged violation of:

Section 5 of the Act of Congress,
approved September 26, 1914, and
Section 7 of an Act of Congress,
approved October 15, 1914.

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19 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

Federal Trade Commission
vs.
Swift and Company,
Respondent
} Docket No. 453

Complaint in the matter of the alleged violation of Section 5 of an Act of Congress, approved September 26, 1914, and Section 7 of an Act of Congress, approved October 15, 1914.

AMENDMENT TO ANSWER OF RESPONDENT.

Now comes Swift and Company, a corporation, respondent herein and amends its Answer, heretofore filed in, as follows:

Strike out he word "now" in first line of the second paragraph of Subdivision XVII of said Answer and substitute therefor, the word "not"; so that said second paragraph of said Subdivision XVII of said Answer, when amended, will read as follows:

Respondent expressly alleges that it is not now engaged in the business of producing and dealing in leather; that it does not hold, own or control, directly or indirectly, as security or otherwise, the capital stock of said England, Walton & Company, Inc., or of any of its said subsidiaries, or of its or their successors or assigns, having sold all interest in said capital stock in September, 1919.

SWIFT AND COMPANY.
By (Signed) L. F. SWIFT,
President.

Dated this 23d day of
January, 1920.
(Signed) ALBERT H. & HENRY VEEDER
76 West Monroe Street, Chicago, Illinois.
Attorneys for Respondent.

20 FEDERAL TRADE COMMISSION Dated F 1921.

Docket No. 453

Section III

Copy of Order Appointing Examiner.

Copy of Order fixing Time and Place for Hearing.

Copy of Notice to Resume Hearing.

21 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION. ss:

Federal Trade Commission
vs.
Swift & Company
} Docket 453

The above entitled proceeding being at issue and ready for the taking of testimony, it is hereby

Ordered, that C. T. Sadler, an Examiner of this Commission, be and he hereby is appointed and designated to receive and hear testimony and to take evidence in said proceeding.

By Order of the Commission.

(Signed) J. P. YODER
J. P. YODER,
Secretary.

(Seal)

Dated February 1, 1921.

22 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION. ss:

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 14th day of March, A. D., 1923.

Present:

Victor Murdock, Chairman,
John F. Nugent,
Huston Thompson,
Nelson B. Gaskill,
Vernon W. Van Fleet.

Federal Trade Commission
vs.
Swift & Company
} Docket 453

Order (Nunc Pro Tunc) Fixing time and place for hearing of proof.

Whereas, on February 1, 1921 the above entitled proceeding being at issue and ready for taking testimony, examiner C. T. Sadler was appointed and designated by the Commission to receive and hear testimony and take evidence in said proceeding; and

Whereas, the hearing of the proof of the charges of the complaint in the above entitled proceeding began before examiner C. T. Sadler on February 9, 1921 at 10 o'clock of the forenoon of that day in the office of the Commission in the city of Chicago, state of Illinois, at which hearing said respondent was represented by counsel; and

Whereas, no time and place was set by the Commission for the hearing of the proof of the charges of the complaint in the above entitled proceeding;

Now, Therefore It Is Ordered, nunc pro tunc, that the hearing of the proof of the charges of the complaint in
23 the above entitled proceeding begin before examiner C. T. Sadler on the 9th day of February at 10 o'clock in the forenoon in the office of the Commission in the city of Chicago, state of Illinois.

By order of the Commission.

(Signed) OTIS B. JOHNSON,
OTIS B. JOHNSON
Secretary.

(Seal)

24 UNITED STATES OF AMERICA Dated M 1921.

BEFORE FEDERAL TRADE COMMISSION. ss:

Federal Trade Commission
vs.
Swift & Company
} Docket 453

NOTICE TO RESUME HEARINGS.

To:

A. H. and Henry Veeder, Esqs.,
76 West Monroe St., Chicago, Ill.

James M. Sheean, Esq.,
105 South LaSalle St., Chicago, Ill.

Frank L. Horton, Esq.,
c/o Swift & Co., Chicago, Ill.

Gentlemen:

You will please take notice that on June 3, 1921, at the hour of 10:00 o'clock A. M., Chicago city time, before the undersigned, Clarence T. Sadler, an Examiner heretofore appointed by the Federal Trade Commission to receive evidence in the above proceeding, in the hearing room of the Federal Trade Commission, No. 1100 Browning Building, 14 West Washington Street, Chicago, Illinois, the taking of testimony in support of the complaint in the above entitled proceeding will be resumed, and continued from day to day at Chicago or such other places as may be designated by the Examiner until completed.

(Signed) CLARENCE T. SADLER
Examiner

May 23, 1921.

Received a copy of the foregoing notice this 25th day of May 1921.

(Signed) A H & HENRY VEEDER
JAMES M. SHEEAN
F. L. HORTON
Attorney for Respondent.

ted 1921. 25

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION. ss:

Federal Trade Commission
vs.
Swift & Company
} Docket 453

NOTICE

To:

A. H. and Henry Veeder, Esqs.,
76 West Monroe St., Chicago, Ill.

James M. Sheean, Esq.,
105 South LaSalle St., Chicago, Ill.

Frank L. Horton, Esq.,
c/o Swift & Company, Chicago, Ill.

Gentlemen:

You will please take notice that immediately upon the completion of the taking of testimony in chief for the Commission in the above entitled proceeding, I will move the Examiner to proceed at once with the taking of evidence for the respondent.

Respectfully,
(Signed) ADRIEN F. BUSICK,
ADRIEN F. BUSICK,
Acting Chief Counsel for Federal Trade Commission

May 23, 1921.

Received a copy of the foregoing notice this 25th day of May 1921.

(Signed) A H & HENRY VEEDER
JAMES M. SHEEAN
F. L. HORTON
Attorney for Respondent

26 FEDERAL TRADE COMMISSION

Docket No. 453

Section IV.

Copy of Motion to Separate the Several Causes in Docket 453.

Copy of Motion to Dismiss.

(These two motions were presented at the hearing at Chicago on February 9, 1921, and denied by the Examiner.

The transcript of testimony is bound in two separate volumes.

27 MOTION TO SEPARATE THE SEVERAL CAUSES IN DOCKET NO. 453.

Federal Trade Commission
vs.
Swift & Company
Respondent
} Docket 453

Now Comes Swift & Company, respondent herein by its attorneys, and moves to separate the several causes contained in the complaint of the Federal Trade Commission in Docket No. 453, and further moves that each of the three causes in said complaint be heard separately.

(Signed) A. H. & HENRY VEEDER
" JAMES M. SHEEAN, FRANK L. HORTON
Attorneys for Respondent

28 MOTION TO DISMISS

Federal Trade Commission
vs.
Swift & Company
Respondent
} Docket 453

Now comes Swift & Company, respondent herein, by its attorneys, and moves that the complaints and proceedings in Docket No. 453 be dismissed for the following reasons:

1. That the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" is unconstitutional and void under, and in conflict with the terms and provisions of Section 1, Article III, of the constitution of the United States, in that the said Act attempts to grant and confer judicial power to a tribunal other than a duly constituted court ordained and established by the Congress under the constitution and laws of the United States.

2. On the ground that the Act of Congress approved October 15, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for Other Purposes" is unconstitutional under, and in conflict with the terms of the fifth amendment to the constitution of the United States for the reason that the said Act is in these proceedings an attempt to deprive the respondent its liberty
29 its right to contract, and its property without due process of law.

3. That the several complaints on their respective faces do not state a cause of action.

4. The Federal Trade Commission is without power to act in, or hear, or determine these several proceedings and causes.

5. That the Act of Congress approved October 15, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for Other Purposes" and each and every section thereof, and particularly Section 7 of said Act as unconstitutional and void in that they are contrary to the fifth amendment of the constitution of the United States, and Section 7 of said Act denies to any corporation, and this respondent, the right to acquire, possess, or dispose of property and deprives this respondent of its liberty and property without due process of law.

6. That the complaint does not state facts sufficient to

constitute a violation of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for other Purposes", or a violation of any other section of Act or Acts of Congress.

7. That the complaint herein does not state facts sufficient to constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to Create
30 a Federal Trade Commission, to define its powers and duties, and for other purposes.

8. That the acts, facts, and things complained of each and all of them are "intrastate" and not subject to regulation by Congress or the Federal Trade Commission.

(Signed) A. H. AND HENRY VEEDER
" JAMES M. SHEEAN AND FRANK L. HORTON
Attorneys for Respondent

31 FEDERAL TRADE COMMISSION

Docket No. 453

Section V.

Copy of Motion to Exclude Part of Complaint,

Copy of Order Excluding Portion of Complaint,

Copy of Order Assigning New Docket Number to Excluded Portion of Complaint.

to ex- part of laint.

32 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION.

Federal Trade Commission
vs.
Swift and Company,
Respondent.
} Docket No. 453.

Complaint in the matter of the alleged violation of Section 5 of an Act of Congress, approved September 26, 1914, and Section 7 of an Act of Congress, approved October 15, 1914.

MOTION.

Now comes the Respondent, Swift and Company, a Corporation, and moves that the complaint relating to England, Walton & Company, Inc., be excluded from this docket.

(Signed) A H & HENRY VEEDER
" JAS. M. SHEEAN and
F. L. HORTON
Attorneys for Respondent.

xclud- ortion nplaint.

33 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 18th day of April, A. D. 1921.

Present:

Huston Thompson, Chairman,
Nelson B. Gaskill,
Jno. Garland Pollard,
Victor Murdock,
John F. Nugent,
Commissioners.

Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

Order Excluding Portion of Complaint, relating to England Walton & Company, Inc., from Docket No. 453.

The respondent having duly appeared by its attorneys and

by motion filed herein on March 30, 1921, moved that the portion of the complaint relating to England Walton & Company, Inc., be excluded from this Docket, and the Commission being fully advised in the premises and having given due consideration thereto;

Now, Therefore, It Is Hereby Ordered, that said motion of respondent be and the same is hereby granted, in that Counts V and VI of said complaint alleging, among other things, the acquisition of capital stock of England Walton & Company, Inc., be excluded from this Docket; and that this order shall be without prejudice to the right of the Commission to make such further orders in the premises as to the Commission may seem proper.

By the Commission.

(Signed) J. P. YODER
J. P. YODER,
Secretary.

(Seal)

34 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 20th day of May, A. D., 1921.

Present:

Huston Thompson, Chairman,
Nelson B. Gaskill,
Jno. Garland Pollard,
Victor Murdock,
John F. Nugent,
Commissioners.

Federal Trade Commission
vs.
Swift & Company
} Docket No. 453
Docket No. 775

Order Assigning New Docket Number to portion of complaint excluded from Docket No. 453.

The Commission having duly made an order on the 18th day of April, 1921, excluding from Docket No. 453 a portion of the complaint thereof relating to England, Walton & Com-

pany, Inc., appearing therein as counts V and VI of said complaint,

Now, Therefore, It Is Hereby Ordered, that said portion of the complaint known as counts V and VI relating to the acquisition of capital stock of England, Walton & Company, Inc., shall be and become Docket No. 775 and hereafter be so known and designated.

By the Commission.

(Signed) J. P. YODER
J. P. YODER,
Secretary.

(Seal)

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merce.

35 FEDERAL TRADE COMMISSION

Docket No. 453

Section VI.

Copy of Petition for Intervention filed by Moultrie Chamber of Commerce.

Copy of Order denying Petition to Intervene.

36 Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453

Now comes the Moultrie Chamber of Commerce of Moultrie, Georgia, a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business in Moultrie, Colquitt County, Georgia, by Hill & Gibson, its attorneys at law, and prays that it be allowed to intervene in the above entitled cause, and, for cause of intervention, shows the following:—

—1—

The Moultrie Chamber of Commerce of Moultrie, Georgia, is a civic body politic, devoted to the agricultural and commercial welfare of the County of Colquitt, the City of Moultrie and the section of Southwest Georgia. It was organized to promote the agricultural, the commercial and the industrial development of said county and section, not only insofar as this this development concerns the individual businesses of its members, but also as it affects the interests of all citi-

zens throughout the territory in which it operates. For a period of years, its membership has comprised practically all of the business and professional men, industrial and commercial concerns, and a large majority of the leading farmers of said county. Practically all of its operating capital has been expended in the promotion of an agricultural
37 development program, including better markets for farm products, including live stock, land clearing, consolidated rural schools, improved public highways and other fundamental problems.

—2—

Petitioner is informed that Swift & Company is charged with a violation of Section 5 of an act entitled, "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914; and petitioner is also informed that Swift & Company is charged with a violation of Section 7 of what is commonly known as the "Clayton Act." Petitioner has evidence bearing upon the issues raised by the complaint and answer in the above entitled cause, and petitioner fears that such evidence will not be presented unless this intervention is allowed, and that its interests and the interests of those it represents, to wit the City of Moultrie, the Couny of Colquitt and Southwest Georgia, will be seriously, if not irreparably damaged, if your petitioner is not allowed a full and complete hearing.

—3—

Petitioner shows that the Moultrie Packing Company was organized, under the auspices of, and promoted by, the Moultrie Chamber of Commerce, in the year 1914, and that its establishment was a community enterprise; that its stock holders were composed of farmers, merchants and business men generally, residing in the said County of Colquitt
38 and the City of Moultrie; that its creation was inspired by a motive, on the part of its stockholders, to encourage the raising of live stock in the community, and thereby provide a market to the farmers of Southwest Georgia, of farm products other than cotton, then threatened with disaster by reason of the approaching boll weevil invasion; that its stockholders realized that when the farmers of this section had been encouraged to raise live stock to the extent of supply-

ing a larger packing plant at Moultrie, that they could then seek to interest one of the large national packers, with a view to having one of them acquire said plant and thus afford this section larger and better facilities for the marketing of live stock. The stock holders of the Moultrie Packing Company, at the time they engaged in the meat packing business, did not do so with the idea of remaining in said business permanently, but chiefly with the idea of encouraging the raising of live stock to the extent that, ultimately, one of the large packers might be induced to take over said plant.

—4—

Petitioner shows, therefore, that in the year 1917, after the stock holders of the Moultrie Packing Company had offered its plant for sale to various packers, it finally succeeded in inducing Swift & Company to purchase said plant, to take the same over and continue its operation. Petitioner shows that it necessarily requires a large outlay of money to operate a packing plant, even of the size which was being operated by the Moultrie Packing Company, and its stock holders had, at the time of the sale of said plant to Swift & Com-
39 pany, realized that, on account of the rapid expansion of the business, which was far greater than they had anticipated, it could not take care of the constantly increasing production of live stock in Southwest Georgia, Southern Alabama and the northern portion of Florida, without a great burden to many of its stock holders, who were compelled, from time to time, to personally endorse the obligations of the company.

—5—

Petitioner further shows that in the sale of said plant to Swift & Company, that the stock holders of the said Moultrie Packing Company were willing and anxious to sell the same, and that Swift & Company used no unfair or unjust means in purchasing the same, but that said sale was, in every way, free from any scheme or device, on the part of Swift & Company, to induce the stock holders of said Moultrie Packing Company to sell the same; but, on the other hand, the stock holders of said company were, perhaps, more willing to sell than Swift & Company was to buy, and that the stock holders of said company, in selling their plant to Swift & Company, did so realizing that in so doing the Southeastern States

would be benefitted in said plant being placed in the hands of a concern of greater financial ability, which would increase the capacity and distribution facilities of said plant, encourage the raising of live stock to a greater extent, and thereby insure its permanency, as well as that of the packing industry in the south.

—6—

40 Petitioner shows that since the purchase of said plant by Swift & Company, that said plant has been increased in size; that all of its facilities for the handling of live stock have been increased; that it has done more to encourage the raising of live stock throughout the states of Georgia, Alabama, and Florida than ever could have been done by the Moultrie Packing Company; all of which has not only conferred a blessing upon the agricultural interests of said sections in furnishing a market for live stock, and thereby enabling them to survive, notwithstanding the presence of the boll weevil, but by said acts on the part of said company, every phase of the business and commercial life of said sections has been wonderfully benefitted.

—7—

Your petitioner further shows that the acquisition of the Moultrie Packing Company's plant by Swift & Company did not, in any manner, have the effect of restraining commerce in the section of the country in which said Swift & Company continued to do business thereafter, and did, in no wise, tend to create a monopoly, nor did it in any wise tend to lessen competition, either in the purchase of live stock or the sale of its finished products. On the other hand, petitioner shows that the average price received by farmers and stock raisers has been higher since the purchase of said plant by Swift & Company than it had been prior thereto; and that the price of the finished products has, conditions considered, been equally as low, if not lower.

—8—

41 Your petitioner shows that the largely increased scale of operations of the packing industry at Moultrie, by Swift & Company, since its acquisition of the plant of Moultrie Packing Company, has not only encouraged and in-

creased the diversification of agriculture by the introduction of live stock, as hereinbefore set out, but as a natural result it has also greatly stimulated and augmented the commercial and industrial development of Moultrie, Colquitt County and the surrounding territory. Numerous, already established, commercial concerns and industries have extended their facilities to take care of a larger volume of business, while many new enterprises have sprung into existence, whose growth and success are involved in, and dependent upon, the assurance offered by a continuance of the present scale, or an even larger basis, of operations in the packing industry by Swift & Company. This has necessitated a large investment in commercial properties, as well as residence facilities and public improvements, and the welfare and prosperity of no inconsiderable body of laboring people are vitally interested in, and will be disastrously affected by, a judgment of your Honorable Commission adverse to the respondent and enjoining its future operation of the packing plant at Moultrie.

—9—

Petitioner, in behalf of all the interests it represents,—the citizens, the industries, in fact the agricultural and commercial life of this entire section of Georgia,—is vitally concerned in any order which the Honorable Federal Trade Commission may make. Petitioner desires that all facts,
42 necessary and material to the interests involved, be presented in evidence before your Honorable Commission. Petitioner fears that such facts and evidence will not be presented unless its prayer be granted, and its intervention allowed.

Wherefore, petitioner prays that this, its petition for intervention, be considered, and that the same be allowed, ordered filed and be made a part of the record, and that petitioner be allowed to appear in said proceedings, by its officers, agents or counsel.

Respectfully submitted,
(Signed) Hill & Gibson
Petitioner's Attorneys.

Moultrie Chamber of Commerce
By (Signed) F R Pidcock
President.
(Signed) Chas. B. Caldwell,
Sec.

State of Georgia
County of Colquitt } ss
City of Moultrie

Before the undersigned officers, authorized under the laws of the State of Georgia to administer oaths, personally appeared F. R. Pidcock and Chas B. Caldwell, who on oath depose and say, and each deposes and says, that they are the president and secretary, respectively, of the Moultrie Chamber of Commerce, the petitioner in the above and foregoing petition for intervention; that they are the officers in active charge of the business of said Moultrie Chamber of Commerce, and that the facts contained in said petition are true.

(Signed) F R Pidcock
" Chas B. Caldwell

Sworn to and subscribed before me, this, the ninth day of July, 1921

(Signed) Meda Manning
(Seal) *N. P. State at Large, Ga.*

43 UNITED STATES OF AMERICA

Order of 20, 1921 denying tion to vene

Before Federal Trade Commission:

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 20th day of July, A. D., 1921.

Present:

Houston Thompson, Chairman,
Nelson B. Gaskill,
Jno. Garland Pollard,
Victor Murdock,
Nelson B. Gaskill,
Commissioners.

Federal Trade Commission
vs.
Swift & Company. } Docket No. 453.

This proceeding coming on to be heard on the application of the Moultrie Chamber of Commerce, of Moultrie, Georgia, praying that it be allowed to intervene in the above entitled

case for the purpose of introducing evidence at hearings before an Examiner which are now being conducted at Moultrie, Georgia; and the Commission having duly considered said application and being now fully advised in the premises

It Is Ordered, that said application for leave to intervene be and the same is hereby denied.

By the Commission:

(Signed) J. P. YODER
J. P. YODER,
Secretary.

(Seal)

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44 FEDERAL TRADE COMMISSION

Docket No. 453

Section VII.

Copy of Petition for Intervention, filed by Andalusia Chamber of Commerce,

Copy of Order Denying Petition for Intervention.

Copy of Exceptions to Order Denying Petition.

45 Federal Trade Commission
vs.
Swift & Company
} Docket No. 453.

Now comes the Andalusa Chamber of Commerce, of Andalusia, Alabama, an Association organized and existing in the State of Alabama, with its principal office and place of business in Andalusia, Covington County, Alabama, and A. C. Darling and T. E. Henderson by J. Morgan Prestwood and W. H. Albritton, their attorneys at law, and pray to be allowed to intervene and appear by Counsel, or in person, in the above entitled cause, and, for cause of intervention, show the following:—

—1—

The Andalusia Chamber of Commerce, of Andalusia, Alabama, is a civic association, composed of a large membership consisting of to-wit: Three hundred or more merchants, farmers and business men, residents of the City of Andalusia, and of Covington County, Southeast Alabama, and adjoining

Territory, devoted to the agricultural and commercial welfare of the County of Covington, the City of Andalusia, and Southeast Alabama and West Florida. It was organized to promote the agricultural, commercial and industrial development of said County and Section, not only in-so-far as this development concerns the individual businesses of its members, but also as it affects the interests of all the citizens throughout the Territory in which it operates. For a period of years, its membership has comprised practically all the
46 business and professional men, industrial and commercial concerns, and a large number of the leading farmers of said County and Section. All of its operating Capital has been expended in the promotion of agricultural and civic development programs, including, to a larger extent, better markets for farm products, live stock, land development, school development, diversified farming, increased productiveness of natural resources, improved public highways, and other problems affecting the financial, education and civic development of the Section and Territory hereinbefore named.

—2—

Petitioners are informed that Swift & Company is charged with a violation of Section 5 of an Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and Petitioners are also informed that Swift & Company is charged with a violation of Section 7 of what is commonly known as the "Clayton Act." Petitioners have evidence bearing upon the issue raised by the Complaint and Answer in the above entitled cause, which evidence is, in the opinion of Petitioners, vital to the continued and successful carrying out of the purposes hereinbefore outlined of The Andalusia Chamber of Commerce, and to the continued business development of the Territory hereinbefore described, and Petitioners fear that such evidence will not be properly presented, or will not be presented in such a way as to properly outline and show the interests of said Chamber of Commerce and the General Public, which said Chamber represents in the Territory above named, unless this intervention is allowed, and that the interests of said Chamber of Commerce and the interests of those
47 it represents, viz:—the City of Andalusia, the County of Covington, Southeast Alabama and West Florida, and your other Petitioners, will be seriously, if not irrepar-

ably injured and damaged, if your Petitioners are not allowed a full and complete hearing.

—3—

Petitioners further show that the Andalusia Packing Company was organized under the auspices of, and promoted by, a large number of the Membership of the Andalusia Chamber of Commerce, together with a large number of other citizens of the Territory above named, in the year 1914, and that its establishment was a very large Community enterprise, created and established for the benefit of the Territory hereinbefore named; that the stockholders were composed of farmers, merchants and business men generally, residing in the Counties of Pike, Crenshaw, Geneva, Covington, and other Counties in Southeast Alabama, and in West Florida, and the City of Andalusia; that its creation and organization was inspired by a motive on the part of the stockholders to encourage the raising of live stock in the Territory above named, and thereby provide a market to the farmers of Southeast Alabama and West Florida for farm products other than cotton, the raising of which was at that time made practically impossible by reason of the recent invasion of the boll weevil; that the promotion of this enterprise was at that time necessary to prevent bankruptcy in the Section above named; that its stockholders realized that unless a new industry of this kind could be developed in a large way, the Territory above named would be practically ruined in a financial way for the
48 reason that the raising of cotton, the former chief product of said Territory, had been rendered practically impossible by the recent destructive appearance of the boll weevil. The stockholders of said Andalusia Packing Company, at the time they became engaged in the meat packing business did not do so of choice, but of necessity, and entirely with the idea of encouraging the raising of live stock to the extent that it might be made a paying industry to take the place of an industry which had been ruined.

—4—

Petitioners further show that the stockholders of said Andalusia Packing Company consisted very largely of farmers who were owners of small farms and who were able only to subscribe and pay for a small amount of stock and who were

not able to assist in financing the business of the Company, and that, on account of the very large amount of operating Capital necessary to carry on the business of said Company and continue its operation, credit for money required for this purpose could not be obtained by the Company, but it was necessary from the beginning of operations for a very limited number of the stockholders, who held, as a matter of fact, very small precentages of stock in the Company, to secure funds for said operation by the personal endorsement of the obligations of said Company, which was extremely burdensome and entirely out of proportion to their stockholdings in the Company, and was done only for the purpose of keeping the plant of the Company going temporarily until some permanent plan of operation and development could be worked out; that said Company was not organized, nor was it
49 contemplated at the time of its organization, as a competitive business enterprise in the Meat Packing Industry, the sole purpose of its organization being one of development of a new industry for the reasons above set forth; none of the stockholders of said Company, at the time of its organization, nor thereafter until the sale of its stock, knew anything about the Meat Packing Industry, nor any of its branches, and very soon after its organization, realized that on account of their lack of knowledge of the Industry and the rapid expansion of business, which was far greater than they anticipated, it could not take care of, and it was impossible for it to take care of, the constantly increasing production of live stock in Southeast Alabama and West Florida, the entire burden of continuing operation being placed on a very few stockholders holding small amounts of stock who were required to personally endorse the obligations of the Company in order to keep it going.

—5—

Petitioners further show that the conditions hereinbefore outlined facing said Company and its stockholders, and after several efforts to dispose of the properties of the Company, it was sold to Swift & Company, the entire physical and other assets of the Company being sold and turned over to Swift & Company, the transfer of the stock of the Company by its stockholders being merely for the purpose of what they thought at the time would more expeditiously and quickly consummate the sale, and that in the sale of said plant to

Swift & Company the stockholders of said Andalusia Packing Company were willing and anxious to sell, and that Swift & Company used no unfair or unjust means in purchasing
50 the same, but that said sale was made, in every way, free from any scheme or device on the part of Swift & Company to induce the stockholders of said Andalusia Packing Company to sell the same, but on the other hand, in truth and in fact, the stockholders were more willing to sell than Swift & Company was to buy, and that the stockholders of said Company, in selling their plant to Swift & Company did so realizing and believing, which belief has been confirmed by actual experience, that in so doing the Southeastern States and the Territory hereinbefore named would be benefitted in said plant being placed in the hands of a concern of greater financial ability, which would increase the capacity and distribution facilities of said plant, encourage to a larger extent the raising of live stock, and thereby insure permanency, as well as that of the Packing industry of the South.

—6—

Petitioners further show that since the purchase of said plant by Swift & Company, said plant has been largely increased in size; that all of its facilities for the handling of live stock have been increased; that it has done more to encourage the raising of live stock throughout the States of Alabama, Florida and Groegia than could ever have been done by the Andalusia Packing Company—all of which has not only conferred a blessing upon the agricultural interests of said Sections in furnishing a market for live stock, and thereby enabling them to survive, notwithstanding the presence of the boll weevil, but by said acts on the part of said Company, every phase of the business and commercial life of said Sections has been wonderfully benefitted.

51 —7—

Your Petitioners further show that the acquisition of the Andalusia Packing Company's plant by Swift & Company did not, in any manner, have the effect of restraining commerce in the Section of the Country in which said Swift & Company continued to do business thereafter, and did, in no-wise, tend to create a monopoly, nor did it in anywise tend to lessen competition, either in the purchase of live stock or in the

sale of its finished products—On the other hand, petitioner shows that the average price received by farmers and stock raisers has been higher since the purchase of said plant by Swift & Company than it had been prior thereto, and that the price of the finished products has, conditions considered, been equally low, if not lower.

—8—

Your Petitioners further show that the largely increased scale of operations of the packing industry at Andalusia, by Swift & Company, since its acquisition of the plant of Andalusia Packing Company has not only encouraged and increased the diversification of agriculture by the introduction of live stock, as hereinbefore set forth, but as a material result it has also greatly stimulated and augmented the commercial and industrial development of Andalusia, Covington County, and the surrounding territory. Numerous already established commercial concerns and industries have extended their facilities to take care of a larger volume of business, while many new enterprises have sprung into existence, whose growth and success are involved in, and largely dependent upon the assurance offered of the continuance of the present scale,
52 or an even larger basis, of operations in the packing industry of Swift & Company. This has necessitated a large investment in commercial properties, as well as residence facilities and public improvements, and the welfare and prosperity of no inconsiderable body of laboring people will be disastrously affected by a judgment of your Honorable Commission adverse to Respondent and enjoining its future operation of the packing plant at Andalusia, Alabama, or the requiring of it to dispose of the same.

—9—

Your petitioners would further show that the original investment of the Andalusia Packing Company in its plant and equipment was the sum of approximately $144,717.00; that since said plant was acquired by Swift & Company it has expended large additional sums of money in the expansion and development of said plant in the sum of approximately $426,375.00; that, notwithstanding the efforts of your petitioners, Andalusia Chamber of Commerce, and those whom it represents, and Swift & Company, the volume of live stock

in the territory hereinbefore named has not been increased sufficiently to supply the demands of said plant as now constituted, and keep the same running to capacity, but as a matter of fact, sufficient live stock is not, and has not been available to keep the plant supplied to capacity for more than three (3) months in the year; that volume of live stock sufficient to keep the plant running continuously is necessary for its successful, continued operation from a financial stand-
53 point, and that on accout of lack of volume, petitioners are informed and believe and upon such information and belief aver that said plant has been conducted at a large loss since the acquirement by Swift & Company; that from past experience and present indications it will take at lest a period of five years and very probably ten years to increase production in the territory served by said plant, to the extent that a sufficient volume of live stock can be furnished to keep said plant as at present constituted running to capacity; that in the event Swift & Company should be required to dispose of said plant or the stock of same it would be impossible to secure a purchaser or purchasers willing to pay a price any where around the cost of said plant, and in the opinion of your petitioners it could not be sold at all unless it should be to another large packing industry; that based on the facts above set forth, your petitioners are convinced that in the event Swift & Company should be required to dispose of said plant or its stock therein, the inevitable result would be the setting back of the development of the live stock industry which is vital to the continued development of the territory hereinbefore named, for an indefinite period, and which has been fostered and developed largely through the efforts of your petitioners, Andalusia Chamber of Commerce and its members, and said territory would to a great extent be again put in the unfortunate condition and be surrounded by the same difficulties it faced in the year 1914, when the Andalusia Packing Company was first organized. This averment being further borne out by the fact that the boll weevil infestation is still prevalent throughout said territory.

54 —10—

Petitioners, in behalf of all the interests they represent—the citizens, the industries, in fact the agricultural and commercial life of this entire Section of Alabama—are vitally concerned in any order which the Honorable Trade Commis-

sion may make in this proceeding. Petitioners desire that all the facts, necessary and material to the interests involved, be presented in evidence before your Honorable Body, and they fear that such facts and evidence will not be presented, in fact, cannot be presented from the standpoint of the interests represented, unless their prayer is granted, and their intervention allowed.

Wherefore, Petitioners pray that this, their petition for intervention, be considered, and that the same be allowed, ordered filed and be made a part of the record, and that Petitioners be allowed to appear in said proceedings, by them, and their officers, agents and counsel.

Respectfully submitted,
(Signed) J. Morgan Prestwood
" W. H. Albritton
Petitioners Counsel.

Andalusia Chamber of Commerce,
By,
(Signed) Oscar M. Dugger, *Pres.*
" J. G. Scherf, *Secy-Mgr.*

55 State of Alabama }
Covington County }

Before the undersigned officer, authorized under the laws of the State of Alabama to administer oaths, personally appeared Oscar M. Dugger and J. G. Scherf who on oath depose and say, and each deposes and says, that they are the President and Secretary, respectively of the Andalusia Chamber of Commerce, one of the petitioners in the above and foregoing petition for intervention; that they are the officers in active charge of the business of said Andalusia Chamber of Commerce, and that the facts contained in said petition are true; and also personally appeared before said officer A. C. Darling & F. E. Henderson the other petitioners in said above and foregoing petition for intervention, who say under oath that the facts contained in said petition are true.

(Signed) Oscar M. Dugger, *Pres.*
J. G. Scherf, *Secy-Mgr.*
A. C. Darling
F. E. Henderson

Sworn to and subscribed before me, this 23rd day of July, 1921.

(Signed) DUD L. O'NEAL
Notary Public.

(Seal)

of July 1921, ying peti- for in- vention.

56 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 30th day of July, A. D., 1921.

Present:

Huston Thompson, Chairman,
Nelson B. Gaskill,
Jno. Garland Pollard,
Victor Murdock,
John F. Nugent.
Commissioners.

Federal Trade Commission
vs.
Swift & Company
} Docket No. 453.

This proceeding coming on to be heard on the application of the Andalusia Chamber of Commerce, of Andalusia, Alabama, praying that it be allowed to intervene in the above entitled case for the purpose of introducing evidence at hearings before an Examiner which are now being conducted at Andalusia, Alabama; and the Commission having duly considered said application and being now fully advised in the premises

It Is Ordered, that said application for leave to intervene be and the same is hereby denied, for the reason that it is against the policy of the Commission to permit intervention by other than actually interested parties, and because the Andalusia Chamber of Commerce may introduce testimony through Swift & Company, the relevancy of which will be determined by the Commission when the Commission finally considers the case.

By the Commission:

(Signed) J. P. YODER
J. P. YODER,
Secretary.

(Seal)

57 (Stamped) Federal Trade Commission Received Mar 14 1922 Secretary's Office.

Federal Trade Commission
vs.
Swift & Company
} Docket Number 453.

Comes the Andalusia Chamber of Commerce, et al, who by and through their attorneys, J. Morgan Prestwood and W. H. Albritton, did heretofore on the ..... day of July, 1921, file a petition asking to be allowed to intervene in this cause and offer testimony in their behalf, and now files with the Honorable Federal Trade Commission the following exceptions:

—1—

They except to and assign as error the Federal Trade Commission's order, denying them the right to intervene in said cause in their own behalf.

—2—

They except to and assign as error the refusal of the Federal Trade Commission to grant their petition filed on the ..... day of July, 1921 for intervention in this cause.

—3—

They except to and assign as error the refusal of the Federal Trade Commission to allow them to offer testimony in their own behalf at the hearing of said cause and the taking of testimony at Andalusia, Alabama.

—4—

They except to and assign as error the refusal on the part of Hon. John W. Bennett, Trial Examiner in this cause to allow them to offer and introduce testimony in this cause in their own behalf.

—5—

They except to and assign as error so far as the same relates to the acquisition of the Andalusia Packing Company

and its conduct by Swift & Company the findings of the facts of the Hon. John W. Bennett, Trial Examiner in this cause.

58 —6—

They except to and assign as error the order suggested to be made by the Trial Examiner in this cause.

W. H. ALBRITTON
J. MORGAN PRESTWOOD
Attys. for the Andalusia Chamber of Commerce et al Intervenors.

59 FEDERAL TRADE COMMISSION

Docket No. 453.

Section VIII.

Copy of Motion to Amend Complaint,

Copy of Notice of Hearing upon Motion,

Copy of Respondent's Objections to Motion to Amend Complaint,

Copy of Reply to Respondents Objections,

Copy of Order Granting Motion to Amend the Complaint, nunc pro tunc,

Copy of Amended or Corrected Complaint.

60 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission,
Complainant.
vs.
Swift & Company,
Respondent.
} Docket No. 453.

MOTION TO AMEND COMPLAINT.

Comes now W. H. Fuller, Chief Counsel, and Wm. T. Chantland, Trial Attorney, and moves the Commission to

amend the complaint in this case to conform to the proof as follows, to wit:

1. By striking from Paragraph IV of division I of said complaint in the sixth line from the end of said paragraph the words, "June 5, 1918," and inserting in lieu thereof the following:

January 5, 1918: and that since the acquisition of said capital stock of respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now own same, and has, through its agents, officers, and employees, continuously operated, and controlled the operations of, the plant and business of the said Moultrie Packing Company, whose stock it so acquired, which plant and business respondent operated as the plant and business of the Moultrie Packing Company from about the time of the acquisition of the capital stock, as above set out, up to November 3, 1917, and that from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same.

WTC:CSV
copy HTS

61 2. By inserting in Paragraph IV of division III of said complaint in the fifth line from the end of said paragraph after the words, "Packing Company;" the following: and that since the time of the acquisition of said capital stock by respondent, as above set out, respondent have continuously owned said stock in the manner above stated, and does now so own same, and has, through its agents, officers, and employees, continuously operated, and controlled the operations of, the plant and business of the said Andalusia Packing Company, whose capital stock it so acquired, which it operated from about July 24, 1917, the time of the acquisition of the capital stock, up to about March 30, 1918, as the plant and busines of the Andalusia Packing Company, and from about March 30, 1918, respondent has operated said plant and business as the plant and busines of Swift & Company, and does now so operate same.

And in support of said motion Counsel show to the Commission that the testimony both for the Commission and for respondent fully covered the points of said proposed amendments and was introduced as though said allegations were in said complaint and in issue.

Counsel asks that a day be set for hearing on said motion, and notice thereof fixed to be served upon respondent.

(Signed) W. H. FULLER,
Chief Counsel.
(Signed) WM. T. CHANTLAND,
Trial Attorney.

WTC:CSV
copy HTS

62 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission
vs.
Swift & Company
} Docket No. 453

To: Albert & Henry Veder
76 Monroe St.
Chicago, Ill.
Frank L. Horton,
c/o Swift & Co.
Union Stock Yards
Chicago, Ill.
James M. Sheean
105 S. La Salle St.
Chicago, Ill.

NOTICE.

You will please take notice that the Commission has set Wednesday, March 8, 1922, at 2 p. m. as the time for hearing upon motion of Counsel for the Commission to amend paragraph 4 of division 1 and paragraph 4 of division 3 of the complaint in the above entitled proceding, such hearing to be held in the hearing room in the Federal Trade Commission Building, 2000 D Street N. W. Washington, D. C.; at which time and place you may appear, if you so desire.

Very truly yours,
(Signed) J. P. YODER,
J. P. YODER,
Secretary.

February 21, 1922.

63 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission, *Complainant.*
Swift & Company, *Respondent.*
} Docket No. 453.

RESPONDENT'S OBJECTIONS TO COMMISSION'S MOTION TO AMEND ITS COMPLAINT.

Now comes Swift and Company, Respondent herein, by its attorneys of record and objects to the motion of the Federal Trade Commission to amend its complaint in Docket No. 453, and says that said motion should not be allowed, and objects to said amendment for the following reasons:

(1) The conclusion of the attorneys for the Commission "that the testimony both for the Commission and for Respondent fully covers the points of said proposed amendment and was introduced as though said allegations were in said complaint and in issue" is erroneous.

(2) That the Commission concluded and finished the taking of testimony in said proceedings many months past, on to wit, September 12, 1921; that Respondent did likewise.

(3) That to allow said amendment at this time will put forth entirely new issues from those under which the testimony for both the Commission and Respondent was heretofore taken and will in effect be equivalent to the issuance of a new complaint.

copy HTS

64 (4) Respondent further says that an act of Congress approved August 15, 1921, entitled "An Act to regulate interstate and foreign commerce in live stock, live stock products, dairy products, poultry, poultry products, and eggs, and for other purposes," hereinafter cited as the "Packers and Stockyards Act, 1921," provides:

"Section 406 (b)—On and after the enactment of this act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this act is made subject to the jurisdiction of the Secretary, except in cases in which, before the

enactment of this act, complaint has been served under section 5 of the act entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914, or under section 11 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

(5) Respondent further states that it is a "packer" within the meaning of that term as used in said act of Congress entitled "Packers and Stockyards Act, 1921" (which said act is hereby incorporated herein by reference thereto), approved August 15, 1921; that the effect of such act is to deprive the Federal Trade Commission of all power and jurisdiction over this Respondent except in cases in which, before the enactment of said act, complaint had been served
65 under section 5 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, or under section 11 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties under said act, shall request the said Federal Trade Commission to make investigations and report in any case; that the said Secretary of Agriculture has not requested the said Federal Trade Commission to make a report or investigation in any case; and that by amending said complaint in the manner proposed by the Federal Trade Commission, the Federal Trade Commission is asserting and seeking to exercise power, authority and jurisdiction of which it was deprived by said "Packers and Stockyards Act, 1921."

(6) That the Federal Trade Commission has heretofore in, to-wit, its original complaint, issued and served upon this Respondent a complaint stating its charges in writing in respect to an alleged violation of section 5 of an act of Congress, approved September 26, 1914, and section 7 of an act of Congress, approved October 15, 1914, and has heretofore fixed a time and place for a hearing thereunder;
66 that this Respondent, at great expense, has attended three hearings at Chicago, Ill., two at Atlanta, Ga., two at Jacksonville, Fla., two at Birmingham, Ala., two at Pensacola,

Fla., and one each at Moultrie, Ga., and Andalusia, Ala.; that over 4500 pages of testimony have been taken; that numerous witnesses, at great expense to Respondent and considerable inconvience to themselves, have testified at these hearings; that having stated its charges in writing and caused said hearings to be held, the said Federal Trade Commission is without power or authority to amend said complaint, reopen said issues, and/or file a new complaint herein.

Therefore, the Respondent prays that the Federal Trade Commission deny said motion to amend said complaint.

SWIFT AND COMPANY
(signed) By ALBERT H. & HENRY VEEDER
JAMES M. SHEEAN
FRANK L. HORTON,
Its Attorneys

67 UNITED STATES OF AMERICA

BEFERE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission, *Complainant,*
vs.
Swift and Company, *Respondent.*
} Docket No. 453

REPLY TO RESPONDENT'S OBJECTIONS TO COMMISSION'S MOTION TO AMEND ITS COMPLAINT TO CONFORM TO PROOF.

Comes now Counsel for Federal Trade Commission, and in reply to respondent's objections to Commission's motion to amend its complaint to conform to proof as taken, states that said objections are frivolous, not in good faith and at variance with the pleadings and the records and should not be seriously considered, for the following specific reasons:

First: Respondent in its answer affirmatively alleged the acquisition of and complete control of not only the capital stock, but the physical assets and businesses, following such allegation by a denial that the effect of such acquisitions by respondent was violative of the law; and that the purposes of the transfers made of the physical assets was not to conceal the acquisitions or evade the provisions of the statute;

Second: J. L. Thweatt testified on March 9, 1921, (r. 716-17) that his then occupation was "plant manager for Swift and Company at Andalusia, since October 13, 1919."

H. McDowell, recalled by Counsel for respondent, testified (r. 3153 et seq.) that he at that time was "manager of the Mobile Plant of Swift and Company," and had been such manager, "since February, 1919," and that for one and
68 one-half years prior to that time he was in "the small plant department of Swift & Company's Chicago Office; that is the department which had charge of the so-called small packing houses in the States, including these Southern plants, * * *, including the Moultrie and Andalusia Plants." Mr. McDowell later recalled testified in response to questions of respondent's counsel extensively as to the development of live stock made in the vicinity of these Southern plants following respondent's taking control, with the apparent object of claiming as defensive matter such alleged improvement under their control.

In fact, Mr. Hill, of respondent's counsel, stated that he considered such testimony as to result of respondent's control relevant and material as showing increased production and that he wanted to show the extent of the encouragement "along the lines of placing bulls and boars out among the people" (r. 3362) which were paid for by respondent's Chicago office (r. 3364).

Third: Respondent merely makes the assertion, "that to allow said amendment at this time will bring forth entirely new issues from those under which the testimony for both the Commission and respondent was heretofore taken, and will in effect be equivalent to the issuance of a new complaint." Respondent does not state specifically what said alleged "new issues" are, nor does respondent state in any respect what additional proofs respondent would pro-
69 pose or offer. Moreover, the Commission's counsel proposes no new proof and merely asks for the amendment to conform to the proof as taken, including testimony on the part of respondent as above indicated.

Such amendment is not "equivalent" to the issuance of a new complaint," "nor is it even injecting a single new issue, and that, therefore, points three to six, inclusive, of the objections are not available and have no force.

Wherefore, Counsel for Commission renews its motion to amend to conform to proof; and further asks that the Commission at the time of its ruling on said motion, also set and

fix for the filing of briefs and for final oral argument and submittal.

(Signed) WM. T. CHANTLAND
Trial Counsel.

Rec'd. Copies of the above for Swift & Co 3/6/22
(Signed) LOUIS MACKALL

70 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of March, A. D., 1922.

Present:

Nelson B. Gaskill, Chairman,
Victor Murdock,
John F. Nugent,
Huston Thompson,
} Commissioners.

Federal Trade Commission
v.
Swift & Comany

ORDER.

The above case coming on for hearing on this, the 8th day of March, 1922, on Motion of Commission's Counsel to Amend the Complaint to conform to proof, and the Commission having heard said Motion, and having duly considered same and the objections thereto filed by respondent, and being duly advised in the premises, the Commission finds that the Motion is timely and well taken, and that such amendment conforms to the proof, and does not put forth any new issues: wherefore,

It Is Ordered, that for the purpose and reasons stated therein, said motion to amend the complaint to conform to the proof be, and the same is hereby granted as prayed; and,

It Is Hereby Ordered, that said complaint be so amended, nunc pro tunc, as of the date of issuance of said complaint, as follows, to-wit:

1. By striking from Paragraph Four of division 1 of said complaint, in the sixth line from the end of said paragraph,

the words "June 5, 1918", and inserting in lieu thereof the following:

January 5, 1918; and that since the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now own same, and has, through its agents, officers and employees continuously operated and controlled the operations of, the plant and business of the said Moultrie Packing Company, whose stock it so acquired, which plant and business respondent operated as the plant and business of the Moultrie Packing Company from about the time of the acquisition of the capital stock, as above set out, up to November 3, 1917, and that from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same.

71 2. By inserting in Paragraph Four of Division III of said complaint, in the fifth line from the end of said paragraph, after the words "Packing Company", the following: and that since the time of the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now so own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations of, the plant and business of the said Andalusia Packing Company, whose capital stock it so acquired, which it operated from about July 24, 1917, the time of the acquisition of the capital stock, up to about March 30, 1918, as the plant and business of the Andalusia Packing Company, and from about March 30, 1918, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same.

And,

It Is Further Ordered, that corrected copies of the complaint, with such amendments incorporated, and omitting divisions V and VI, heretofore segregated (and now being Commission's Docket 775) be prepared for the files and record, and one copy to be attached to this Order for service upon respondent. And,

It Is Further Ordered, that the answer of the respondent and all the testimony taken in the case shall stand as made and offered, under the complaint as thus amended.

By the Commission:

(Signed) J. P. YODER,
Secretary.

(Seal).

72 (Corrected Copy)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 24th day of November, A. D., 1919.

Present:

John Franklin Fort, Chairman,
Victor Murdock,
Huston Thompson,
William B. Colver,
Commissioners.

Federal Trade Commission
v.
Swift & Company.
} Docket No. 453

Complaint in the Matter of the Alleged Violation of Section 7 of an Act of Congress Approved October 15, 1914, and Section 5 of an Act of Congress Approved September 26, 1914, (Corrected, to Conform to Proof, and to Severance Made as of April 18, 1921).

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

Paragraph One: That the respondent, Swift & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the City of Chicago, in said State, and has been and is now and at all times hereinafter mentioned engaged in the business of slaughter-

ing live stock, and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, including leather; said products, by-products and commodities being sold by respondent in the various States of the United States, the territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from one or more of said States and territories through and into other States and Territories of the United States and the District of Columbia.

Paragraph Two. That the Moultrie Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at Moultrie, in said State, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported when sold, from the State of Georgia, through
73 and into other States of the United States, the territories thereof and to the District of Columbia, and prior to June 1, 1917, was in direct competition with respondent and other persons, partnerships and corporations similarly engaged.

Paragraph Three: That Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", is and provides, in part, as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Paragraph Four: That on or about June 1, 1917, the respondent purchased 956 shares of the total of 966 shares of the capital stock of said Moultrie Packing Company issued and outstanding, and caused the same to be transferred on the books of said company and reissued to certain officers and employees of the respondent, who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on

or about the 13th day of August, 1917, the respondent caused its said officers and employees who held the said stock to hold a stockholders' meeting of said company and at such meeting to elect as directors of said Moultrie Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and properties of the said Moultrie Packing Company, and caused its said officers and employees, who were the directors and stockholders thereof, to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of the Moultrie Packing Company among the stockholders of said company, and a sale of the remaining asset, including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer was authorized by the Board of Directors of said Moultrie Packing Company composed of officers and employees of the respondent, on or about November 3, 1917, and was ratified at a special meeting of the stockholders of said company, all of whom were officers and employees of the respondent, on or about January 5, 1918; and that since the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations of, the plant and business of the said Moultrie Packing Company, whose stock it so acquired, which plant and business respondent operated as the plant and business of the Moultrie Packing Company from about the time of the acquisition of the capital stock as above set out, up to November 3, 1917, and that from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between respondent and said Moultrie Packing Company; to restrain commerce in the section and community of and adjacent to Moultrie, Georgia, and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by the respondent and said Moultrie Packing Company.

74 Paragraph Five: That the transfer and issue of said stock of the said Moultrie Packing Company to officers and employees of the respondent, the election of employees and officers of respondent as directors and officers of said Moultrie Packing Company, and the pretended sale by such officers of the physical assets and properties of said Moul-

trie Packing Company to the respondent, were intended by the respondent to conceal the acquisition by it of the said stock of said Moultrie Packing Company, and were intended as a device to evade the provisions of Section 7 of the said Act of Congress approved October 15, 1914.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs One, Two and Four of count 1 of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs One, Two and Four are incorporated herein by reference and adopted as a part of the allegations of this count.

III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph One of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph One is incorporated herein by reference and adopted as a part of the allegations of this count.

Paragraph Two: That the Andalusia Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Alabama, with principal place of business at Andalusia, in said State, having capital stock of $133,250, divided into shares of par value of $50 each, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products to be transported when sold, from the State of Alabama, through
75 and into other States of the United States, the territories thereof and the District of Columbia, and prior to July 24, 1917, was in direct competition with respondent and other persons, partnerships and corporations, similarly engaged.

Paragraph Three: That section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides, in part, as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Paragraph Four: That on or about July 24, 1917, the respondent purchased all of the capital stock of said Andalusia Packing Company, issued and outstanding, and caused the same to be transferred on the books of said company, and issued to certain officers and employees of the respondent who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on or about the 24th day of July, 1917, the respondent caused its said officers and employees who held said stock to hold a stockholders' meeting of said company, and at such meeting to elect as directors of said Andalusia Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and properties of the said Andalusia Packing Company and caused its officers and employees who were the directors and stockholders thereof to accept an offer of purchase from the respondent and to pass a resolution direct-

ing a division of the surplus assets of said Andalusia Packing Company among the stockholders of said Company, and the sale of the remaining assets, including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer were authorized by the board of directors of said Andalusia Packing Company, composed of officers and employees of the respondent, on or about March 30, 1918; that on or about June 29, 1918, said board of directors, composed as aforesaid of officers and employees of respondent, resolved to liquidate said Andalusia Packing Company, and that since the time of the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now so own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations, of, the plant and business of the said Andalusia Packing Company, whose capital stock it so acquired, which it operated from about July 24, 1917, the time of the acquisition of the capital stock, up to about March 30, 1918, as the plant and business of the Andalusia Packing Company, and from about March 30, 1918, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between the respondent and said Andalusia Packing Company, to restrain commerce in the section and community of and adjacent to Andalusia, Alabama, and elsewhere; and to tend to cre-
76 ate a monopoly of the lines of commerce carried on by respondent and said Andalusia Packing Company.

Paragraph Five: That the transfer and issue of said stock of said Andalusia Packing Company to officers and employees of the respondent, the election of officers and employees of respondent as directors and officers of the said Andalusia Packing Company, and the pretended sale by such officers of the physical assets and properties of the said Andalusia Packing Company, were intended by the respondent to conceal the acquisition by it of the said stock of said Andalusia Packing Company, and were intended as a device to evade the provisions of Section 7 of said Act of Congress approved October 15, 1914.

IV.

And the Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Swift

& Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

Paragraph One: As grounds for said complaint, said Commission relies upon the matters and things set out in Paragraph One of Count I, and paragraphs Two and Four of count III of this complaint, to the same extent as though the allegations thereon were set out at length herein, and said paragraphs are incorporated herein by reference, and adopted as part of the allegations of this count.

Now, Therefore, Notice Is Hereby Given You, the said Swift & Company, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the City of Washington, D. C., on the 12th day of January, A. D. 1920, at 10:30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission, requiring you to cease and desist from the violations of law charged in this complaint, and requiring said respondent to divest itself of the stock or share capital unlawfully held in said Moultrie Packing Company and the Andalusia Packing Company.

And You Will Further Take Notice that within thirty (30) days after the service of this complaint you are required to file with the Commission an answer in conformity with Rule III of the Rules of practice before the Commission.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its Secretary, and its official seal to be affixed hereto, at the City of Washington, D. C., this 24th day of November, A. D., 1919.

By the Commission.

(Signed) J. P. YODER,
Secretary.

(Seal)

CLAUDE R. PORTER,
Chief Counsel for the Commission.

77 FEDERAL TRADE COMMISSION

Docket No. 453

Section IX.

Copy of Findings as to Facts and Conclusion,

Copy of Order to Cease and Desist and to Divest Stock.

78 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 3d day of August, A. D., 1922.

Present:

Nelson B. Gaskill, Chairman,
Victor Murdock,
John F. Nugent,
Huston Thompson,
Vernon W. Van Fleet,
Commissioners.

Federal Trade Commission
vs.
Swift and Company.
} Docket No. 453

FINDINGS AS TO THE FACTS AND CONCLUSION.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Swift and Company, has been and now is using unfair methods of competition in interstate commerce, in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that said respondent, Swift & Company, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and that a proceeding by it as to such alleged vio-

lation of Section 5 of the Act of September 26, 1914, would be to the interest of the public; and fully stating its charges in that respect; and respondent having entered its appearance by Messrs. Albert H. and Henry Veeder, of Chicago, Illinois, its attorneys, and have duly filed its answer, admitting certain of the allegations of said complaint and denying others, and hearings in said proceeding having taken place before an Examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and the attorneys of both parties having fully argued the issues in the proceeding, and having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein, and being fully advised in the premises, now makes its report and findings as to the fact and conclusion:

Findings as to the Facts:

Paragraph One: That respondent, Swift & Co., organized in 1885, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the City of Chicago, Illinois, and respondent during all of said time has been and now is engaged in the meat-packing industry and trade, including the purchasing and slaughtering
79 of livestock and in the converting and producing of meat and meat products and by-products, and in the sale and shipment and distribution thereof into and through the various States of the United States, the Territories thereof and the District of Columbia, selling, shipping and distributing same through its various branch houses; and respondent, during said period, has been and now is in direct competition with other persons, partnerships and corporations similarly engaged (except as respondent may have been self-restrained by illegal pools, agreements or understandings) and respondent was thus engaged in competition with the Moultrie Packing Co., of Moultrie, Georgia, from about December, 1914, up to the time respondent acquired the capital stock of said company, about June 1, 1917; and respondent was likewise thus engaged in competition with the Andalusia Packing Co., of Andalusia, Alabama, from about May, 1916, to the time when respondent acquired the capital stock of the said company, about July 24, 1917.

Paragraph Two: That the Moultrie Packing Company, organized in 1913, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the City of Moultrie, Georgia, and that said Moultrie Packing Co., from about December, 1914, up to about June, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of livestock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Georgia, and of a substantial portion of said products, estimated at one-third, from the State of Georgia through and into other States of the United States, and more particularly through and into the States of Florida and Alabama; and in said business of sale, shipment and distribution said Moultrie Packing Company was, prior to June 1, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

Paragraph Three: That the Andalusia Packing Company, organized in October, 1915, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business in the City of Andalusia, Alabama, and said Andalusia Packing Co., from about May or June, 1916, up to about July 24, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of livestock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Alabama, and of a substantial portion of said products, estimated at one-fourth, from the State of Alabama through and into other States of the United States, and, more particularly, through the States of Georgia and Florida; and in said business of sale, shipment and distribution, said Andalusia Packing Co. was, prior to about July 24, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

Paragraph Four: That:

(a) Between March 15, and August 2, 1917, respondent, Swift & Company, acquired by purchase, the entire then outstanding capital stock of said Moultrie Packing Company, and caused such capital stock, except twenty shares thereof

not then delivered, to be issued in the names of certain of its officers and employes, and to be held for the use and
80 benefit of said respondent. In the course of the months of June, July and August, 1917, respondent, through said stock ownership, assumed full possession and control of the plant, assets and business of said Moultrie Packing Company, and at all times thereafter retained and exercised such control. Details of said acquisition and control are substantially as follows:

(b) Moultrie Packing Company, a corporation mentioned in Paragraph Two hereof, was organized under the laws of the State of Georgia, on or about October 8, 1913, by W. C. Vereen and other persons in and about the City of Moultrie, in said State, for the purpose of conducting a general packing business, dealing in livestock, meats of all kinds, cold storage of meats, vegetables and other articles, and in the manufacturing of ice. Said Moultrie Packing Company had an authorized capital stock of $300,000.00, divided into shares of $100 each. A plant was constructed at the City of Moultrie, Georgia, and was opened for business in the Autumn of 1914, and from about December, 1914, up to about June 1, 1917, said Moultrie Packing Company continued in increasing volume its operations of purchasing and slaughtering live stock and in preparing and converting of meat and meat products and by-products therefrom, and in their general sale and distribution. In the course of the next year it secured more live stock than it could slaughter, and extended the market for its products to Atlanta, Georgia; Jacksonville, Florida; Birmingham, Alabama, and to other cities and to other States. Sales by said Moultrie Packing Company were made chiefly through brokers, although it also employed salesmen.

(c) F. A. Hunter, of St. Louis, Missouri, General Manager of respondent, Swift & Company, at National Stock Yards, Missouri, in the early spring of 1917, visited the plant of said Moultrie Packing Company, of Moultrie, Georgia, and introduced himself to said W. C. Vereen, then President of said Moultrie Packing Company, whom he found at said plant. Said Hunter stated that he represented Swift & Company, and asked permission to inspect the plant of said Moultrie Packing Company. He was given such permission and made such inspection.

(d) Several weeks later, said Hunter called upon said Vereen in the Piedmont Hotel, in Atlanta, Georgia. At this time said Hunter asked said Vereen if he would not sell the

Moultrie Packing Company. Said Hunter said he would try to make the sale of said Company to Swift & Company.

(e) Several weeks later, May 14, 1917, said Hunter called said Vereen on long distance telephone from Montgomery, Alabama, and made an appointment for said Vereen to meet Louis F. Swift, an Executive Officer of Swift & Company, respondent herein, at Jacksonville, Florida, the next morning. Said Vereen and said Swift met at the Windsor Hotel, in Jacksonville, May 15, 1917. Said Swift and said Vereen talked over the business of said Moultrie Packing Company, and the source of its supply of live stock, referring to a map as they did so. Said Vereen told said Swift that said Vereen would sell his stock in the Moultrie Packing Company for $150. a share, and could probably get all the other stock of said Moultrie Packing Company for the same price. Said Swift offered said Vereen $125. a share for said stock of said Moultrie Packing Company and said Vereen objected that that was not enough, basing his objection upon the earnings of said Moultrie Packing Company. Then said Swift remarked:

81 "Don't you believe, if I were to go to Albany or to Valdosta, Georgia, and tell them I would put up a packing plant there twice as large as the Moultrie plant, that they would give me $50,000 or $75,000?"

Mr. Vereen stated in his testimony:

"I thought a moment, and I said, 'Yes, Mr. Swift, I believe they would'; for the reason that I knew that Albany and Valdosta, at that time, were very, very anxious to have a packing plant." (Testimony of W. C. Vereen, Transcript p. 553.)

There was some further discussion and said Vereen agreed to give said Swift an option till June 1, 1917, on the stock that he owned personally in said Moultrie Packing Company, and to buy up for him at the same price the stock held by others. An option of the above tenor was given at that time by the said Vereen to said Swift, the price of said stock being named as $125 per share. Said Swift reduced said option to writing and it was signed in duplicate at once by said Vereen, and dated May 15, 1917. The option as prepared by said Swift was taken in the name of said F. A. Hunter, and recited that outstanding stock was about $97,000 par, and that the books of the Company showed a profit of about $90,000. Said Swift told said Vereen that if any correspondence became necessary, to address Mr. H. J. Nelson, Swift & Company, Union Stock Yards, Chicago.

(f) Said Vereen, on his return to Moultrie, called a meeting of the Board of Directors of said Moultrie Packing Company, told them of his conversation with said Swift, and they agreed to accept $125 per share for their holdings of stock in said Moultrie Packing Company, and to take up with all stockholders of said Moultrie Packing Company the matter of getting them to sell their stock at the same price. Said option expired June 1, 1917, and was extended by said Vereen until July 1, 1917. Said Vereen succeeded, early in June, 1917, in getting all of the outstanding capital stock of Moultrie Packing Company, 966 shares in all, except 20 shares which at that time was located but not available for various reasons, and sent said stock to the Fort Dearborn National Bank, at Chicago, with instructions to said bank to deliver said stock to Swift and Company, respondent herein, on payment for it of $125 a share. The stock was afterwards paid for and delivered to respondent, Swift and Company, and the 20 additional shares were later secured and delivered to respondent, Swift & Company.

(g) A financial statement of said Moultrie Packing Company, submitted to its president by its auditor, May 15, 1917, showed net profits of said Company from January 1, 1917, to April 30, 1917, of $62,843.76 and a surplus of $92,170.79.

(h) Prior to May 28, 1917, respondent, Swift & Company, after a meeting of certain of its officers and employes in its Board room in Chicago, acting for and on behalf of respondent, caused O. C. E. Matthies, its Auditor, to proceed to Moultrie, Georgia, and make an audit of the books of said Moultrie Packing Company. This audit as reported June 1, 1917, to H. J. Nelson, an officer of Swift & Company, respondent,

82 set forth among other things, that "As a result of this investigation, I am of the firm conviction that the capital stock of this concern is worth $165 per share as a going concern, and recommend its purchase. * * *"

(i) As of the same date, W. A. Burnett was also sent to Moultrie, Georgia, by respondent, to make a physical inspection of the plant of said Moultrie Packing Company. He reported thereafter upon its condition and the estimated cost of changes which were recommended. His report indicated that the physical plant was worth about $202,500.

(j) In June, 1917, Swift & Company sent H. C. Wallow, its employe at Chicago, to take charge of the office of said Moultrie Packing Company, and sent F. A. Luchsinger to "watch things" and work with Mr. Brooks, then Manager of said Moultrie Packing Company. Mr. Luchsinger was to

be the representative of the respondent, Swift & Company, at said plant. Mr. Brooks remained with said Moultrie Packing Company until about November 1, 1917, but after the coming to Moultrie of said Luchsinger Mr. Brooks was under the direction of respondent, Swift & Company, in his activities at said plant.

(k) August 13, 1917, stockholders of said Moultrie Packing Company held an adjourned annual meeting at Moultrie, Georgia, at which said W. C. Vereen and said C. H. Wallow, each credited with five shares of the capital stock of said Moultrie Packing Company, were present in person, and W. B. Traynor, C. A. Peacock, J. J. McGuire, T. H. Ingwersen, H. C. Carr and E. B. Kixmiller were represented by proxies. In all, 798 shares were there represented. All stockholders represented or present at said meeting, except said W. C. Vereen, were then officers or employes of respondent, Swift & Company, and held the stock of said Moultrie Packing Company for the use and benefit of said respondent. Said W. C. Vereen was given five shares of stock, to qualify him as an officer and director, which stock he at once upon securing indorsed in blank and returned to Swift & Company. At said stockholders' meeting of August 13, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, A. B. Kixmiller, O. C. E. Matthies and F. A. Luchsinger, all employes or officers of Swift & Company, were elected directors of said Moultrie Packing Company. W. C. Vereen, then without pecuniary interest in said Moultrie Packing Company, was also elected a director. Said stockholders, at said meeting of August 13th, 1917, also elected the following officers:

T. H. Ingwersen, President; O. C. E. Matthies, Vice President; C. H. Wallow, Secretary & Treasurer; C. A. Peacock, Assistant Secretary; J. J. McGuire, Assistant Treasurer. All of said officers were then officers or employes of Swift & Company.

(l) November 3, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, and O. C. E. Matthies, all then officers or employes of respondent, met in Chicago as directors of said Moultrie Packing Company; C. A. Peacock, also an officer of respondent, was also present and acted as Secretary and said officers and employes, acting at the same time as such directors of said Moultrie Packing Company, at the instance and direction of respondent, at said meeting of November 3, 1917, adopted a resolution to sell all the business and property of said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, authorizing and

directing the President to carry such sale into effect, and providing that the Company be wound up and liquidated
83 and its assets be distributed among the stockholders in proportion to their holdings.

(m) At a special meeting of stockholders held at Moultrie, Georgia, January 5, 1918, at which F. A. Luchsinger, W. C. Vereen and C. H. Wallow were present in person, and T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, O. C. E. Matthies, W. B. Traynor, C. A. Peacock and J. J. McGuire were represented by proxy, said action of said Board of Directors, at its meeting November 3, 1917, selling the property and business of the said Moultrie Packing Company was, at the instance and direction of the respondent, confirmed, and said Moultrie Packing Company was ordered wound up and liquidated, and its assets distributed to stockholders in proportion to their holdings. At said stockholders' meeting of January 5, 1918, 956 shares of the capital stock of said Moultrie Packing Company were represented, being all the outstanding stock except ten shares. All stockholders at said meeting of January 5, 1918, were officers and employes of respondent, Swift & Company, except the said W. C. Vereen, who had no pecuniary interest in the five shares of stock which he then held.

(n) A written instrument, dated November 3, 1917, evidences the sale by said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, of its entire business and plant except real estate, and a deed dated November 24, 1917, evidences the sale by said Moultrie Packing Company of its real estate at Moultrie, Georgia, to Swift & Company. Said written instrument and deed were without consideration (other than nominal) moving to said Moultrie Packing Corporation, and constituted and were mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of, respondent's prior illegal acquisition of the capital stock of the said Moultrie Packing Company.

Paragraph Five: That:

(a) On or about July 24, 1917, respondent, Swift & Company, acquired by purchase the entire outstanding capital stock of said Andalusia Packing Company, and caused said capital stock to be reissued to numerous persons who were then officers or employes of respondent, which persons held such stock for the use and benefit of respondent. In the month of August, 1917, respondent, through such stock ownership, assumed complete possession and control of the plant,

assets and business of said Andalusia Packing Company, and at all times thereafter retained said possession and control. Details of such acquisition and control are in substance as follows:

(b) On or about October 8, 1915, T. E. Henderson, and other residents of Andalusia, Alabama, and in the neighborhood thereof, organized said Andalusia Packing Company, under the laws of the State of Alabama, with power to build, operate and maintain a packing house or packing plant or cold storage buildings and to engage in, carry on and operate a general packing-house and cold-storage business. Said Andalusia Packing Company had an authorized capital stock of $250,000, all of one class, divided into 5,000 shares of $50 each, par value. Said stock was sold to about 150 to 200 subscribers in the City of Andalusia and the neighborhood thereof, until about 2665 shares of such stock were outstanding.

84 (c) After the organization of said Andalusia Packing Company, and prior to July, 1916, said corporation constructed a packing plant in said City of Andalusia.

(d) About June, 1916, said plant began the operations of purchasing and slaughtering livestock and conducting a general packing and cold storage business, although the volume of said business was not large until October, 1916, and thereafter. Said Andalusia Packing Company secured its livestock principally in the surrounding territory, and found a market for its goods in the State of Alabama, Georgia and Florida, and other States. Its principal output was pork and pork products. Its business grew rapidly and it found a ready and profitable market for its products.

(e) Late in May, or early in June, 1917, F. A. Hunter, of St. Louis, General Manager of respondent, Swift & Company, of National Stock Yards, Illinois, and H. C. Carr, of the livestock-buying and dressed beef department of respondent, Swift & Company, visited Andalusia, Alabama, and inspected the plant of said Andalusia Packing Company. They had met President T. E. Henderson, and after the inspection of said plant, called upon him at his office in a bank in Andalusia, in which he was also an officer. Livestock and packing-house conditions were discussed, and said Hunter, before leaving, asked said Henderson if he and his associates wanted to sell their plant. Said Henderson replied that he had not thought of it, and anticipated that there might be trouble with stockholders if such a sale were attempted. Said Hunter finally told said Henderson that if he and his associates wished to

sell said Andalusia plant, to write said Carr at Chicago. Said Henderson replied that he would prefer to put it in this way: "If you gentlemen take a notion that you want to buy this plant, you let me know." That ended the conversation at the time.

(f) Ten days or two weeks thereafter, said Carr wrote said Henderson a letter concerning the purchase of said Andalusia Packing Company plant, and said Henderson replied by telegram, dated June 5, 1917, advising said Carr to send a representative to "discuss matter." Said Carr wired said Henderson, June 6, 1917, that he would be in Andalusia June 8, 1917, and said Henderson by wire made an appointment with said Carr at said Henderson's office in Andalusia on that date.

(g) Said Carr kept said appointment, meeting said Henderson at Andalusia, June 8, 1917, and also meeting A. C. Darling, a stockholder, and then Secretary of said Andalusia Packing Company. As a result, said Henderson and said Darling gave said Carr an agreement in writing, running to H. C. Carr, "for Swift and Company", amounting to a sort of option at $75 per share, par value $50, until June 27, 1917, upon the capital stock held individually by said Henderson, and said Darling, in said Andalusia Packing Company, being 144 shares owned by said Darling and 130 shares owned by said Henderson. Said Darling and said Henderson agreed, also, to use their best efforts toward buying the remaining shares of stock in said Andalusia Packing Company at $75 per share, for respondent. In the event of their failing to secure the other stock, the option upon their own stock was not to bind them.

(h) Telegrams were exchanged thereafter between said Carr and said Henderson, resulting in a telegraphic confirmation by said Henderson, June 26, 1917, of the sale of said
85 2665 shares of the capital stock of said Andalusia Packing Company, at $70 a share. The facts developed in this proceeding do not fully reveal the reason why the price for said capital stock was finally fixed at $70, rather than $75, per share, the price named in said option, but there were some indications that respondent let it be known to said Henderson and said Darling that an alternative proposition was then being considered by respondent of establishing a packing plant in Montgomery, Alabama. Said Carr and said Henderson also corresponded as to details of such sale, such as the assumption of debts of said Andalusia Packing Company by respondent; in relation to outstanding accounts; inventory

files and other details, having exchanged letters June 28 and July 2 and 9, 1917.

(i) Respondent, Swift & Company, sent its attorney, R. E. Fisher, to Andalusia, Alabama, prior to July 11, 1917, and said attorney examined the corporate records of said Andalusia Packing Company and the titles to its properties, and reported favorably by telegram to Swift & Company's attorneys in Chicago, July 11, 1917, and to Louis F. Swift, President of respondent in Chicago, by letter of July 14, 1917. Respondent, Swift & Company, also sent its auditor, O. C. E. Matthies, to Andalusia, who checked up inventories and accounts and made a report thereon; and the construction department of respondent inspected and reported upon the plant of said Andalusia Packing Company. All these matters are summarized in a memorandum dated July 20, 1917, signed by said Carr and addressed by initials to several officers of respondent. At this time said Andalusia Packing Company showed a surplus of $62,724.32, as a result of operation up to May 1, 1917.

(j) Certain agreements of guarantee dated July 24, 1917, fixing definitely outstanding notes of said Andalusia Packing Company, and certifying that the shares of capital stock sold were the only shares outstanding, were made by said Henderson and said Darling with the officers of respondent, Swift & Company.

(k) Assignments in blank of certificates covering all the shares of capital stock of said Andalusia Packing Company then outstanding were secured from all the stockholders by said Henderson and Darling, in the course of a few weeks following their giving of an option on their capital stock to respondent.

(l) After all said stock had been thus secured, said Henderson and said Darling proceeded with the certificates thereof to Chicago, and on July 24, 1917, said certificates of said stock were delivered by said Henderson and Darling in the Directors' room of respondent in Chicago, assigned in blank, to a representative of respondent, Swift & Company. Said H. C. Carr, T. H. Ingwersen and L. A. Carton, of respondent, being present at the time.

(m) Respondent, Swift & Company, by its check, paid said Henderson $186.550 for said 2665 shares of capital stock of said Andalusia Packing Company, and said payment was entered in the investment ledgers of respondent, Swift & Company.

(n) Said Swift & Company sent to Andalusia, Alabama,

to take control of the business and property of said Andalusia Packing Company, about July 16, 1917, G. D. Rogers
86 and C. B. Colt, both then employes of respondent, and said Rogers and said Colt, immediately upon the acquisition of said stock by respondent, July 24, 1917, assumed such control on behalf of respondent. T. G. Conner, former superintendent of said plant at Andalusia, remained in the employ of said Andalusia Packing Company until about November, 1917, but during that time worked under the direction of respondent.

(o) While in said Directors' room, said Henderson, as President, and said Darling, as Secretary, of said Andalusia Packing Company, signed new certificates of stock in said Andalusia Packing Company to T. H. Ingwersen, for 820 shares; to G. D. Rogers, for 100 shares, to H. C. Carr for 820 shares, to W. B. Traynor for 825 shares, to T. E. Henderson for 100 shares—being in all 2665 shares, the total capital stock of said Andalusia Packing Company then outstanding. All persons to whom said stock was then so assigned were then officers or employes of respondent, except said T. E. Henderson, and said Henderson immediately assigned his said certificate of stock in blank and returned it to a representative of Swift & Company, respondent. The stock was then placed nominally in the name of said Henderson, to qualify him as a director and as Vice President of said Andalusia Packing Company, at the request of said Carr, of respondent, Swift & Company.

(p) T. E. Henderson, T. H. Ingwersen and G. D. Rogers, represented by proxy to H. C. Carr; H. C. Carr and W. C. Traynor, holding 2665 shares of stock of said Andalusia Packing Company, being all of said stock then outstanding, met at the Northeast corner of Exchange and Packers Avenue, Chicago, July 24, 1917, and amended the by-laws of said Andalusia Packing Company as to the places at which corporate business of said Andalusia Packing Company might thereafter be transacted, and as to other points Said Henderson, who had secured in advance resignations of officers and directors of said Andalusia Packing Company in office before said stock had been acquired by respondent, presented such resignations at said meeting; said resignations were accepted and the following directors were elected: W. B. Traynor, T. H. Ingwersen, G. D. Rogers, H. C. Carr—all officers or employes of respondent. Said Henderson was permitted to remain a director, at the request of said Carr.

(q) Said directors held a special meeting, at the same

place, immediately after said stockholders' meeting, all except said Rogers being present, and after having accepted the resignation of the former officers of said Andalusia Packing Company, elected the following officers: T. H. Ingwersen, President; T. E. Henderson, First Vice President; C. A. Peacock, Secretary; C. M. Williamson, Treasurer, and J. J. McGuire, Assistant Treasurer—all of said officers so elected being the officers or employes of respondent, except said Henderson, who accepted his office at the request of said Carr, of respondent, Swift & Company. It was resolved by said directors that said G. D. Rogers should thereafter countersign all checks of said Andalusia Packing Company drawn against its funds in bank, and C. B. Colt, also an employe of respondent, was made statutory agent of said corporation in Alabama.

(r) At a special meeting of the Board of Directors of said Andalusia Packing Company, held at Union Stock Yards, Chicago, August 7, 1917, C. M. Williamson, as Treasurer, was authorized to sign checks against the funds in bank of said corporation, and said checks were to be countersigned by said G. D. Rogers.

87 (s) At a special meeting of the directors of said Andalusia Packing Company at Union Stock Yards, Chicago, August 14, 1917, C. B. Colt was elected and designated to succeed to the functions of C. M. Williamson, Treasurer of said corporation.

(t) Stockholders of said Andalusia Packing Company, including said H. C. Carr, W. B. Traynor and T. E. Henderson, representing the capital stock of said corporation to the number of 1745 shares, met at Union Stock Yards, Chicago, in annual meeting, October 8, 1917, and reelected the directors elected July 24, 1917.

(u) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the then directors of the Andalusia Packing Co., met October 29, 1917, at Union Stock Yards, Chicago, and reelected the officers of said corporation then holding.

(v) Directors of said Andalusia Packing Company met at Union Stock Yards, Chicago, March 26, 1918, T. H. Ingwersen, W. B. Traynor and H. C. Carr being present, with C. A. Peacock acting as Secretary, and resolved that a dividend of $97,276.14 be declared, payable March 30, 1918, to stockholders of record on the books of the Company on that date.

(w) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the board of directors, with C. A. Peacock, secretary, of the Andalusia Packing Co., all being of-

ficers or employes of respondent, and acting, at the same time, as directors and secretary of said Andalusia Packing Co., purported to meet at the office of said company in Chicago, March 30, 1918, and at the instance and for the benefit of respondent, beneficial owners of all the stock of said Andalusia Packing Co., declared a dividend of $97,276.14; and at the same time, acting in the above dual capacity, said persons purported to accept an offer "to purchase all the property and business of this company," and purported to authorize and instruct "the proper officers of this company" "to convey, assign and transfer to said Swift & Co. all of the property and business of this company by proper instruments of conveyance." Such instruments of transfer were executed, and each bears date, both as to execution and acknowledgment, of November 30, 1918, (Com's. Exs. 187 and 188). Respondent directed the record of said alleged meeting of November 30, 1918, and the instruments of transfer designated, to be prepared by respondent's general counsel, in a letter dater April 9, 1918, and such record and such instrument were in fact executed between April 8, 1918, and April 23, 1918, the date when the executed instruments were returned to respondent's counsel by respondent's secretary.

(y) By a certain deed in writing, and a certain other instrument in writing, both dated March 30, 1918, said Andalusia Packing Company, through its President, T. H. Ingwerson, and its Secretary, C. A. Peacock, transferred to respondent, Swift & Company, respectively, the real estate at Andalusia, Alabama, of said Andalusia Packing Company, and the business and physical assets of said Andalusia Packing Company, wherever situated. Said written instrument of sale, and deed, were without consideration (other than nominal) moving from respondent to said Andalusia Packing Company corporation, and they constituted and were, mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of respondent's prior illegal acquisition of the capital stock of the said Andalusia Packing Company.

88 Paragraph Six: That said acquisition by purchase of the capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, Swift & Company, as set forth in Paragraphs Four and Five hereof, respectively, was fully consummated, and full control of the business and property of said Moultrie Packing Company and of said Andalusia Packing Company by respon-

dent was secured by means of said acquisition of stock before the physical assets of said Moultrie Packing Company and said Andalusia Packing Company, as such, were nominally transferred to respondent.

Paragraph Seven: That:

(a) Prior to the acquisition of said stock of said Moultrie Packing Company and said Andalusia Packing Company by respondent, as set forth in Paragraphs Four and Five hereof, said corporations whose stock was so acquired were in direct competition with each other and with the respondent, in the sale of meat and meat products in interstate commerce; but within a few weeks after said acquisition of said stock, said competition of said Moultrie Packing Company, and said competition of Andalusia Packing Company, with each other and with respondent wholly ceased and has not since been resumed. Instances of said competition may be noted as follows:

(b) Beginning late in 1914, or early in 1915, said Moultrie Packing Company sold its said meats and meat products in Atlanta, Georgia, and many other cities and towns in the State of Georgia, to the same dealers to whom the respondent at the same time sold or endeavored to sell similar products shipped into Atlanta and other cities and towns in the State of Georgia, in interstate commerce, and sold and offered for sale in interstate commerce in said cities and towns.

(c) M. M. Stanaland, for many months (18 months or more), prior to October 22, 1917, was a broker in meats and meat products whose principal place of business was in Atlanta, Georgia, and who represented said Moultrie Packing Company. Prior to August, 1917, said Stanaland sold and delivered in Atlanta, Georgia, and the neighborhood thereof, meats and meat products manufactured by said Moultrie Packing Company, aggregating many scores of thousands of dollars in value, and estimated in volume at one to three carloads per week; and in such sale of said products, prior to August, 1917, met from day to day, in competition, the salesmen of said respondent, who were selling or endeavoring to sell similar products of respondent, shipped into Atlanta in interstate commerce.

(d) Immediately following the taking over of the stock and control of said Moultrie Packing Company, by respondent, said Stanaland experienced difficulties in securing from the said Moultrie Packing Company his usual supplies of

meat and meat products, and prices of said meat and of some of said products were gradually advanced by said Moultrie Packing Company under the direction of respondent, so as to make it more and more difficult for said Stanaland to market said meat and meat products to his customers; such prices so fixed by said Moultrie Packing Company for said Stanaland being at times higher than the prices at which the branch house of respondent in Atlanta was permitted at the same time to sell identical products in the same territory.

On October 22, 1917, the account of said Moultrie Packing Company was entirely withdrawn from said Stanaland, and said Stanaland ceased to be a broker for said Moultrie Packing Company, and competition between said Moultrie Packing Company and respondent, which had been nominal since July, 1917, wholly ceased in Atlanta and in the neighborhood thereof immediately upon said Stanaland's dismissal.

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(e) Before said respondent had acquired the stock of said Moultrie Packing Company, the sale of meat and meat products of said Moultrie Packing Company by said Stanaland tended to lower the prices secured by respondent for similar products in Atlanta and in the neighborhood thereof, since the said Stanaland, for said Moultrie Packing Company, sold largely what is known as "soft pork", or peanut-fed pork, which could be produced and sold at a lower price in that locality than could the Western, or corn-fed pork, shipped long distances and sold by respondent at that time in that territory. Said peanut-fed pork was generally considered of a lower grade than Western, or corn-fed pork, and was sold in the market at a differential of one to five cents, or an average differential of about 2c a pound lower than Western pork; at the same time, its flavor was liked by consumers in that locality, and said peanut-fed pork was in such active demand that it was difficult to secure a supply sufficient to meet such demand.

(f) From and after September, 1916, and up to July 24, 1917, J. W. Clarke Company, then brokers in Atlanta, Georgia, dealing in meat and meat products, sold as brokers the products of said Andalusia Packing Company, in Atlanta and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products, also shipped to and sold in Atlanta in interstate commerce; and said Andalusia Packing Company, through its broker, J. W. Clarke Company, was likewise, at this time, in competition

with said Moultrie Packing Company in Atlanta and the neighborhood thereof, in the sale of meats and meat products. Said J. W. Clarke Company, during the period from September, 1916, to July 24, 1917, sold in Atlanta and the neighborhood thereof, meats and meat products, largely soft, or peanut-fed pork products, and shipped to them in interstate commerce by said Andalusia Packing Company, of the value of many thousands of dollars, estimated at $4,000 or more per week. Said pork was usually sold at a differential below Western, or corn-fed pork, but was in active demand in said territory.

(g) Immediately after respondent had acquired the stock of said Andalusia Packing Company, and assumed, through the acquisition of said stock, control thereof, said J. W. Clarke Company found it increasingly difficult to get meat and meat products from said Andalusia Packing Company to fill its orders; prices of said products were advanced by said Andalusia Packing Company, at the instance of respondent, so as to make their sale increasingly difficult, and said prices were at times higher than the prices at which the branch house of respondent in Atlanta was permitted to sell identical products in the same territory.

(h) Immediately after the acquisition by respondent of the capital stock of said Andalusia Packing Company, July 24, 1917, the Manager in charge of said Andalusia Packing Company for respondent, adopted the policy of selling the products of said Andalusia Packing Company through respondent's branch houses in Atlanta and elsewhere. As a consequence, said J. W. Clarke Company was gradually eliminated from the business, and about October, 1917,
90 was cut off from shipments by and receipts from said Andalusia Packing Company. Competition of said Andalusia Packing Company with respondent and with said Moultrie Packing Company in Atlanta, Georgia, and the neighborhood thereof, which was nominal after July 24, 1917, wholly ceased about October, 1917.

(i) Between October, 1916, and July, 1917, said Moultrie Packing Company sold and shipped its meat and meat products in interstate commerce, to Jacksonville, Florida, in competition with respondent. Such sales were made through Samuel T. Smith, broker for said Moultrie Packing Company, who sold in Jacksonville, Florida, and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products at the same time, in inter-

state commerce. The sales of said Samuel T. Smith of the products of said Moultrie Packing Company had amounted, during the period he so represented said Company in Jacksonville, to many thousands of dollars, and estimated at a volume of two carloads of said products per week.

(j) After respondent had acquired the capital stock of said Moultrie Packing Company, said Smith found it increasingly difficult to get the meats and meat products of said Moultrie Packing Company at prices at which they could be sold in Jacksonville and the neighborhood thereof, and, at times, respondent, through its branch house in Jacksonville, sold said products at prices substantially lower than said Smith was permitted to make to his customers. After July, 1917, said Smith sold but nominal amounts of said products of said Moultrie Packing Company in Jacksonville and the neighborhood thereof, and in September, 1917, his sales of said products wholly ceased and he ceased to represent said Moultrie Packing Company in the sale of its products in said territory. Thereafter, the products of said Moultrie Packing Company, when sold at all in Jacksonville and the neighborhood thereof, were sold only through the branch house of respondent, and competition between respondent and said Moultrie Packing Company in the sale of meat products wholly ceased after September, 1917, in Jacksonville and the neighborhood thereof.

(k) Between September, 1916, and July 24, 1917, said Andalusia Packing Company sold and shipped its meats and meat products to Birmingham, Alabama, and the neighborhood thereof, to the same dealers to whom, at the same time, respondent sold and endeavored to sell similar products shipped into Birmingham, Alabama, and the neighborhood thereof, in interstate commerce.

(l) During said period, from October, 1916, to July 24, 1917, E. P. Allen & Company, brokers dealing in meats and meat products, represented said Andalusia Packing Company in the sale of its said products in Birmingham and the neighborhood thereof, where said E. P. Allen and his salesmen during said period constantly met in competition salesmen of respondent selling similar products. Said Allen and his salesmen in said period solicited the same customers and sold similar products to the same dealers as respondent. Said E. P. Allen & Company sold during said period such products of said Andalusia Packing Company to the volume of many thousands of dollars, the volume being estimated at two to three carloads a week. Said products were of soft,

or peanut-fed pork and were sold at a differential lower than Western pork, but were in active demand in said territory.

91 (m) After respondent had acquired the capital stock of said Andalusia Packing Company, July 24, 1917, said E. P. Allen & Company found it increasingly difficult to secure the products of said Andalusia Packing Company to supply its customers, and in many instances the prices which said E. P. Allen & Company were instructed to secure for said products by said Andalusia Packing Company were substantially higher than the prices at which the branch house of respondent in Birmingham, Alabama, was permitted to sell the same products in Birmingham and the neighborhood thereof. About the latter part of October, 1917, said Andalusia Packing Company ceased to sell its said products through said E. P. Allen & Company, and thereafter sold said products solely through the branch house or other sales organization of respondent, and competition between said Andalusia Packing Company and respondent, which had been nominal after July 24, 1917, wholly ceased in Birmingham, Alabama, and the neighborhood thereof, as well as elsewhere.

(n) Similar competition between respondent, said Andalusia Packing Company and said Moultrie Packing Company, prior to said acquisition by respondent of the stock of said Andalusia Packing Company and said Moultrie Packing Company, took place in scores of cities and towns in the State of Georgia, Florida and Alabama, and wholly ceased soon after said acquisition of said stock, and before the purchase by respondent of the physical assets, as such, of said Andalusia Packing Company and said Moultrie Packing Company.

Paragraph Eight: For many years prior to the times that said Moultrie Packing Company and said Andalusia Packing Company began business many dealers in meats and meat products, including respondent, offered their products for sale to dealers in the territory in which said Moultrie Packing Company and said Andalusia Packing Company did the bulk of their business—namely, in the States of Georgia, Florida and Alabama. Sale in said territory of said products of said Moultrie Packing Company and said Andalusia Packing Company, from the autumn of 1916 to July, 1917, materially increased competition in said territory in said products, especially in soft or oily pork products. For a time after the acquisition by the respondent of the stock of said Moultrie Packing Company and said Andalusia Pack-

ing Company, there was a substantial lessening of competition in said territory in the sale of said oily pork products, and a complete elimination of competition in said product and other meat and meat products between respondent and said Moultrie Packing Company and said Andalusia Packing Company, and between said Moultrie Packing Company and said Andalusia Packing Company.

Paragraph Eight and A Half: Respondent, in the spring of 1917, decided to enter the southern field in the packing industry, wherein the Moultrie Packing Company and the Andalusia Packing Company were operating, either by building or acquiring a packing plant, after respondent's representatives had reported that at that time, on account of the increasing livestock production, respondent might profitably enter such field. Respondent's said representative had reported adversely to such entry for the previous two years. Respondent, by its acquisition of the capital stock and control of the said two operating competitive concerns, to wit, the Moultrie Packing Company and the Andalusia Packing Company, rather than building a plant of its own, not only eliminated the then existing competition between respondent and the concerns whose capital stocks were acquired, but also
92 eliminated all increasing, prospective and potential competition from such concerns, particularly in the purchase of live stock.

Paragraph Nine: That:

(a) Moultrie Packing Company, in 1914, slaughtered 53 head of cattle of a dressed weight of 24,739 pounds, and 2032 hogs, of an aggregate dressed weight of 200,598 pounds; in 1915, said Company slaughtered 1629 cattle of a dressed weight of 396,748 pounds and 32,658 hogs of a dressed weight of 2,199,441 pounds, in 1916, said Packing Company slaughtered 701 cattle of a dressed weight of 196,333 pounds; and 78,125 hogs of a dressed weight of 7,305,506 pounds; for the first six months of 1917, said Company slaughtered 901 cattle of a dressed weight of 252,280 pounds, and 42,421 hogs of a dressed weight of 3,907,909 pounds; in 1914 said Company produced 20,230 pounds of lard; in 1915, 326,580 pounds; in 1916, 1,171,875 pounds, and for the first six months of 1917, 827,575 pounds. It had ample supply of hogs except in three or four summer months, at times many more than it could handle. Said Company found ready sale for its products and its business was highly profitable and growing rapidly; up to the time that respondent acquired its capital stock it was marketing its product through salesmen and brokers.

(b) Andalusia Packing Company, in 1916 slaughtered 21 cattle of a dressed weight of 6,426 pounds and 31,439 of a dressed weight of 3,065,341 pounds; from January 1, 1917, to May 1, 1917, said Company slaughtered 549 cattle of a live weight of 432,195 pounds and 26,438 hogs of a dressed weight of 2,914,692 pounds. It produced 383,774 pounds of lard in 1916, and 564,293 pounds of lard from January 1, 1917, to May 1, 1917. It had ample supply of livestock, especially hogs, except during three or four summer months. Said Company found a ready sale for its products, and its business was highly profitable and was growing rapidly at the time respondent acquired its capital stock.

(c) Respondent greatly enlarged the capacity of the plant of said Moultrie Packing Company, after having acquired its stock; its slaughter of beef cattle was increased radically, but, except in 1919, its slaughter of hogs at said plant had decreased since the acquisition of the capital stock of said plant by respondent. In the last six months of 1917, at the plant of said Moultrie Packing Company there were slaughtered 2,573 cattle and 26,566 hogs; in 1918, at said plant there were slaughtered 18,008 cattle and 72,666 hogs; in 1919, there were slaughtered at said plant, 10,381 cattle and 103,099 hogs; in 1920, at said plant there were slaughtered 8,378 cattle and 65,281 hogs; in the first six months of 1921, there were slaughtered at said plant, 3,626 cattle and 36,080 hogs.

(d) The respondent somewhat enlarged the capacity of said Andalusia Packing Company plant after having acquired its stock, or at least made some improvements in said plant. The slaughter of beef cattle was greatly increased after respondent had acquired the stock of said Andalusia Packing Company, but its slaughter of hogs at said plant, after such acquisition, decreased as compared with the slaughter of hogs at said plant before such acquisition. In the last five months of 1917, there were slaughtered at the plant of the Andalusia Packing Company, 21,186 cattle and 63,976 hogs; in 1919, there were slaughtered at said plant, 11,759 cattle and 61,676 hogs; and in 1920, there were slaughtered at said plant 8,687 cattle and 39,523 hogs; for the first six
93 months of 1921, there were slaughtered at said plant 4,552 cattle and 29,313 hogs.

(e) Respondent Company, in its various plants, in 1917, slaughtered 2,153,908 cattle, 846,472 calves, 3,162,937 sheep and 7,288,159 hogs; in 1919, the year of its largest production, respondent slaughtered in its various plants, 2,337,124 cattle, 1,231,262 calves, 4,044,719 sheep and 8,662,824 hogs.

Its production fell off radically in 1920. Respondent is one of the largest two of the meat packers and does business through branches, salesmen and car routes, all over the United States.

(f) In 1919, there were slaughtered in the United States, under federal inspection, as reported officially; 10,989,984 cattle, 3,969,019 calves, 12,691,117 sheep and lambs, 87,380 goats, and 41,611,830 hogs; so that respondent slaughtered more than one-fifth of the cattle and hogs and about one-third of the calves and sheep slaughtered under federal inspection in the year 1919.

Paragraph Ten: That the acquisition of said capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, as described in Paragraphs Four and Five hereof, was not solely for investment, nor acquired in forming a subsidiary corporation under the permissive provisions prescribed in Section 7 of the Act of Congress approved Octobed 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Paragraph Eleven: That Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides in part as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce."

Paragraph Twelve: That the acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses of said corporation, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent

and each of said named companies, resulting from such control and operation by respondent under the conditions and circumstances set forth in the foregoing Findings as to the Facts, were and are in violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled,

"An Act to supplement existing laws against unlawful
94 restraints and monopolies, and for other purposes"; and

were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Conclusion.

The acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent, under the conditions and circumstances set forth in the foregoing Findings as to the Facts, were and are in violation of the provisions of Section 7, of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

(Signed) NELSON B. GASKILL,
NELSON B. GASKILL,
(Seal) *Chairman.*

Dated this 3rd day of August, A. D., 1922.

Attest:

(signed) OTIS B. JOHNSON
OTIS B. JOHNSON,
Acting Secretary.

95 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 3d day of August, A. D., 1922.

Present:

Nelson B. Gaskill, Chairman,
Victor Murdock,
John F. Nugent,
Huston Thompson,
Vernon W. Van Fleet,
Commissioners.

Federal Trade Commission
vs.
Swift and Company. } Docket No. 453

ORDER.

The Federal Trade Commission having issued and served its complaint herein, and respondent, Swift & Company, having entered its appearance by its attorneys, Messrs. A. N. and Henry Veeder, James M. Sheenan, Esq., and Frank L. Horton, Esq., of Chicago, Illinois, duly authorized and empowered to act in the premises, and having filed its answer; and thereafter, hearings in this proceeding having taken place before an Examiner of the Commission; and evidence having been presented before said Examiner on behalf of the Commission and on behalf of respondent; and the presentation of such evidence having been closed, respectively, by the attorneys for the Commission and by the attorneys for the respondent; and thereafter, the attorneys for the Commission and the attorneys for respondent having duly filed their briefs in this proceeding with the Commission, and having fully argued and presented to the Commission the issues in this proceeding, and having submitted said issues for consideration and determination; and the Commission having fully considered the record, and having been fully advised in the premises, has heretofore made and entered its report and its conclusion that respondent has violated the provisions of Section 5 of the Act of

Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report and findings are hereby referred to and made part hereof.

Now, Therefore, It Is Ordered: That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:

(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Com-
96 pany and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employes and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by any one for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employe or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and Desist from further engagements in un-

fair methods of competition in violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and in so ceasing and desisting, shall Cease and Desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also Cease and Desist from further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and/or control of the capital stock of either said Moultrie Packing Company or said Andalusia Packing Company and/or through the control and/or ownership of the properties, physical assets and businesses of either of said named corporations.

97 It Is Further Ordered, that the said respondent, Swift & Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

By the Commission:

(Signed) OTIS B. JOHNSON,
Acting Secretary.

(Seal)

98 FEDERAL TRADE COMMISSION

Docket No. 453

Section X.

Copy of Resolution of Committion to Modify Findings as to the Facts, and setting date for Hearing thereon,

Copy of Respondent's Objections to Modification of Findings,

Copy of Modified Findings as to the Facts.

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99 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

In the Matter of
Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

WHEREAS, the Commission heretofore, to wit, on August 3, 1922, made its Report and Findings as to the Facts in the above entitled proceeding; and

Whereas, in the opinion of the Commission, the evidence warants a modification of such Report and Findings as to the Facts; and

Whereas, a transcript of the record in said proceedings has not been filed in the Circuit Court of Appeals as provided by Section 5 of the Federal Trade Commission Act, and therefore the Commission may, upon such notice and in such manner as it shall deem proper, modify any report and findings made or issued by it under the provisions of Section 5 of said Act; therefore,

Be It Resolved: That on the 15th day of November, 1922, at 2:00 o'clock in the afternoon of said day, the Commission will consider the Report and Findings as to the Facts, with the object of modifying said Report and Findings as to the Facts as follows:

By striking out sub-paragraph (c) of paragraph 4 on page 5 of said Report and Findings as to the Facts, and substituting in lieu thereof, the following:

(c) F. A. Hunter, of St. Louis, Missouri, General Manager of respondent Swift & Company, at National Stock Yards, East St. Louis, Illinois, in the early spring of 1917, visited
100 the plant of said Moultrie Packing Company, of Moultrie, Georgia, and introduced himself to said W. C. Vereen, then President of said Moultrie Packing Company, whom he found at said plant. Said Hunter stated that he represented Swift & Company, and asked permission to inspect the plant of said Moultrie Packing Company. He was given such permission and made such inspection.

By striking out sub-paragraph (e) of paragraph 5, on page 11 of said Report and Findings as to the Facts, and substituting in lieu thereof, the following:

(e) Late in May, or early in June, 1917, F. A. Hunter, of St. Louis, General Manager of respondent, Swift & Company, of National Stock Yards, East St. Louis, Illinois, and H. C. Carr, of the live stock-buying and dressed beef department of respondent Swift & Company, visited Andalusia, Alabama, and inspected the plant of said Andalusia Packing Company. They had met President T. E. Henderson, and after the inspection of said plant called upon him in his office in a bank in Andalusia, in which he was also an officer. Live stock and packing-house conditions were discussed, and said Hunter, before leaving, asked said Henderson if he and his associates wanted to sell their plant. Said Henderson replied he had not thought of it, and anticipated that there might be trouble with stockholders if such a sale were attempted. Said Hunter finally told said Henderson that if he and his associates wished to sell said Andalusia plant, to write said Carr at Chicago. Said Henderson replied that he would prefer to put in this way:— "If you gentlemen take a notion that you want to buy this plant, you let me know." That ended the conversation at the time.

By striking out sub-paragraph (w) of Paragraph 5, on page 17 of said Report and Findings as to the Facts, and substituting in lieu thereof, the following:

(w) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the board of directors, with C. A. Peacock, secretary, of the Andalusia Packing Company, all being officers or employees of respondent, and acting at the same time as directors and secretary of said Andalusia Packing Co., purported to meet at the office of said company in Chicago, March 30, 1918, and at the instance and for the
101 benefit of respondent, beneficial owners of all the stock of said Andalusia Packing Co., declared a dividend of $97,276.14; and at the same meeting, acting in the above dual capacity, said persons purported to accept an offer "to purchase all the property and business of this company," and purported to authorize and instruct "the proper officers of this company" "to convey, assign and transfer to said Swift & Co. all of the property and business of this company by proper instruments of conveyance." Such instruments of transfer were executed as of, and each bears date, both as to execution and acknowledgment, as of March 30, 1918 (Com's. Ex.s. 187 and 188). Respondent directed the record of said alleged meeting of March 30, 1918, and the instruments of transfer designated, to be prepared by respondent's general

counsel, in a letter dated April, 9, 1918, and April 23, 1918, at the date when the executed instruments were returned to respondent's counsel by respondent's secretary.

Be It Further Resolved, that this Resolution be served upon said respondent by registered mail not later than the 10th day of November, 1922.

By the Commission:

(Signed) OTIS B. JOHNSON,
OTIS B. JOHNSON,
Secretary.

(Seal)

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102 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION: ss.

In the Matter of
Federal Trade Commission
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} Docket No. 453.

Now comes the respondent, Swift & Company, by its attorneys of record and says that the Federal Trade Commission ought not to modify or change its Report upon the facts, conclusion and order hereinbefore entered in the above entitled cause unless such change or modification shall be for the purpose of making void the said order or dismissing said complaint. To any other change or modification respondent objects for the following reasons:

1. That the Commission has heretofore been ordered by the United States Circuit Court of Appeals for the seventh circuit to file in said court a transcript of the record in the above entitled cause, and that under the law the Commission is now without power to change or modify its report upon the facts, its conclusions and order.

2. When liberally construed the complaint is insufficient to show and the evidence does not disclose a violation of either Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act.

3. For further reasons the respondent adopts the allegations of its "exceptions to the Examiners report upon the facts, to the Examiners conclusions, and to the Examiners suggested order," to the same extent as though the said allegations were set out at length herein. Said exceptions and suggested report upon the facts, conclusions and orders have

been heretofore filed with the Federal Trade Commission and are set forth at length on pages 68 to 83 both inclusive of respondents brief.

(Signed) ALBERT H. and HENRY VEEDER,
JAMES M. SHEEAN,
FRANK L. HORTON,
Attorneys for Respondent.

103 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

Federal Trade Commission
v.
Swift & Company.
} Docket No. 453.

MODIFIED FINDINGS AS TO THE FACTS.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Swift & Company, has been and now is using unfair methods of competition in interstate commerce, in violation of Section 5 of An Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that said respondent, Swift & Company, has been and is violating the provisions of Section 1 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public; and fully stating its charges in that respect; and respondent having entered its appearance by Messrs. Albert H. and Henry Veeder, of Chicago, Illinois, its attorneys, and having duly filed its answer, admitting certain of the allegations of said complaint and denying others, and hearings in said proceeding having taken place before an Examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and the attorneys of both parties having fully ar-

gued the issues in the proceeding, and having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein, and being fully advised in the premises, now makes its report and findings as to the fact and conclusion:

Finding as to the Acts.

Paragraph One: That respondent, Swift & Co., organized in 1885, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the City of Chicago, Illinois, and respondent during all of said time has been and now is engaged in the meat-packing industry and trade, including the purchasing and slaughtering of livestock and in the converting and producing of meat and meat products and by-products, and in the sale and
104 shipment and distribution thereof into and through the various States of the United States, the Territories thereof and the District of Columbia, selling, shipping and distributing same through its various branch houses; and respondent, during said period, has been and now is in direct competition with other persons, partnerships and corporations similarly engaged (except as respondent may have been self-restrained by illegal pools, agreements or understandings) and respondent was thus engaged in competition with the Moultrie Packing Co., of Moultrie, Georgia, from about December, 1914, up to the time respondent acquired the capital stock of said company, about June 1, 1917, and respondent was likewise thus engaged in competition with the Andalusia Packing Co., of Andalusia, Alabama, from about May 1916, to the time when respondent acquired the capital stock of the said company, about July 24, 1917.

Paragraph Two: That the Moultrie Packing Company, organized in 1913, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the City of Moultrie, Georgia, and that said Moultrie Packing Co., from about December, 1914, up to about June, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the

State of Georgia, and of a substantial portion of said products, estimated at one-third, from the State of Georgia through and into other States of the United States, and more particularly through and into the States of Florida and Alabama; and in said business of sale, shipment and distribution said Moultrie Packing Company was, prior to June 1, 1917, in direct competition in intereste commerce with respondent and other persons, partnerships and corporations similarly engaged.

Paragraph Three: That the Andalusia Packing Company, organized in October, 1915, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business in the City of Andalusia, Alabama, and said Andalusia Packing Co., from about May or June, 1916, up to about July 24, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of livestock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Alabama and of a substantial portion of said products, estimated at one-fourth, from the State of Alabama through and into other States of the United States, and, more particularly, through the States of Georgia and Florida; and in said business of sale, shipment and distribution, said Andalusia Packing Co. was, prior to about July 24, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

Paragraph Four: That:

(a) Between March 15, and August 2, 1917, respondent, Swift & Company, acquired by purchase, the entire then outstanding capital stock of said Moultrie Packing Company, and caused such capital stock, except twenty shares thereof not then delivered, to be issued in the names of certain of its officers and employees, and to be held for the use and
105 benefit of said respondent. In the course of the months of June, July and August, 1917, respondent, through said stock ownership, assumed full possession and control of the plant, assets, and business of said Moultrie Packing Company, and at all times thereafter retained and exercised such control. Details of said acquisition and control are substantially as follows:

(b) Moultrie Packing Company, a corporation mentioned

in Paragraph Two hereof, was organized under the laws of the State of Georgia, on or about October 8, 1913, by W. C. Vereen and other persons in and about the City of Moultrie, in said State, for the purpose of conducting a general packing business, dealing in livestock, meats of all kinds, cold storage of meats, vegetables and other articles, and in the manufacturing of ice. Said Moultrie Packing Company had an authorized capital stock of $300,000.00, divided into shares of $100 each. A plant was constructed at the City of Moultrie, Georgia, and was opened for business in the Autumn of 1914, and from about December, 1914, up to about June 1, 1917, said Moultrie Packing Company continued in increasing volume its operations of purchasing and slaughtering live stock and in preparing and converting of meat and meat products and by-products therefrom, and in their general sale and distribution. In the course of the next year it secured more live stock that it could slaughter, and extended the market for its products to Atlanta, Georgia; Jacksonville, Florida; Birmingham, Alabama, and to other cities and to other States. Sales by said Moultrie Packing Company were made chiefly through brokers, although it also employed salesmen.

(c) F. A. Hunter, of St. Louis, Missouri, General Manager of respondent, Swift & Company, at National Stock Yards, East St. Louis, Illinois, in the early spring of 1917, visited the plant of said Moultrie Packing Company, of Moultrie, Georgia, and introduced himself to said W. C. Vereen, then President of said Moultrie Packing Company, whom he found at said plant. Said Hunter stated that he represented Swift & Company, and asked permission to inspect the plant of said Moultrie Packing Company. He was given such permission and made such inspection.

(d) Several weeks later, said Hunter called upon said Vereen in the Piedmont Hotel in Atlanta, Georgia. At this time said Hunter asked said Vereen if he would not sell the Moultrie Packing Company. Said Hunter said he would try to make the sale of said Company to Swift & Company.

(e) Several weeks later, May 14, 1917, said Hunter called said Vereen on long distance telephone from Montgomery, Alabama, and made an appointment for said Vereen to meet Louis F. Swift, an Executive Officer of Swift & Company, respondent herein, at Jacksonville, Florida, the next morning. Said Vereen and said Swift met at the Windsor Hotel in Jacksonville, May 15, 1917. Said Swift and said Vereen talked over the business of said Moultrie Packing Company,

and the source of its supply of live stock, referring to a map as they did so. Said Vereen told said Swift that said Vereen would sell his stock in the Moultrie Packing Company for $150 a share, and could probably get all the other stock of said Moultrie Packing Company for the same price. Said Swift offered said Vereen $125 a share for said stock of said Moultrie Packing Company and said Vereen objected
106 that that was not enough, basing his objection upon the earnings of said Moultrie Packing Company. Then said Swift remarked:

"Don't you believe, if I were to go to Albany or to Valdosta, Georgia, and tell them I would put up a packing plant there twice as large as the Moultrie plant, that they would give me $50,000 or $75,000?"

Mr. Vereen stated in his testimony:

"I thought a moment, and I said, 'Yes, Mr. Swift, I believe they would'; for the reason that I knew that Albany and Valdosta at that time, were very, very anxious to have a packing plant." (Testimony of W. C. Vereen, Transcript p. 553.)

There was some further discussion and said Vereen agreed to give said Swift an option until June 1, 1917, on the stock that he owned personally in said Moultrie Packing Company, and to buy up for him at the same price the stock held by others. An option of the above tenor was given at that time by the said Vereen to said Swift, the price of said stock being named as $125 per share. Said Swift reduced said option to writing and it was signed in duplicate at once by said Vereen, and dated May 15, 1917. The option as prepared by said Swift was taken in the name of said F. A. Hunter, and recited that outstanding stock was about $97,000 par, and that the books of the Company showed a profit of about $90,000. Said Swift told said Vereen that if any correspondence became necessary, to address Mr. H. J. Nelson, Swift & Company, Union Stock Yards, Chicago.

(f) Said Vereen, on his return to Moultrie, called a meeting of the Board of Directors of said Moultrie Packing Company, told them of his conversation with said Swift, and they agreed to accept $125 per share for their holdings of stock in said Moultrie Packing Company, and to take up with all stockholders of said Moultrie Packing Company the matter of getting them to sell their stock at the same price. Said option expired June 1, 1917, and was extended by said Vereen until July 1, 1917. Said Vereen succeeded, early in June,

1917, in getting all of the outstanding capital stock of Moultrie Packing Company, 966 shares in all, except 20 shares which at that time was located but not available for various reasons, and sent said stock to the Fort Dearborn National Bank, at Chicago, with instructions to said bank to deliver said stock to Swift & Company, respondent herein, on payment for it of $125 a share. The stock was afterwards paid for and delivered to respondent, Swift & Company, and the 20 additional shares were later secured and delivered to respondent, Swift & Company.

(g) A financial statement of said Moultrie Packing Company, submitted to its president by its auditor, May 15, 1917, showed net profits of said Company from January 1, 1917, to April 30, 1917, of $62,843.76 and a surplus of $92,170.79.

(h) Prior to May 28, 1917, respondent, Swift & Company, after a meeting of certain of its officers and employes in its Board room in Chicago, acting for and on behalf of re-
107 spondent, caused O. C. E. Matthies, its Auditor, to proceed to Moultrie, Georgia, and make an audit of the books of said Moultrie Packing Company. This audit as reported June 1, 1917, to H. J. Nelson, an officer of Swift & Company, respondent, set forth among other things, that "As a result of this investigation, I am of the firm conviction that the capital stock of this concern is worth $165 per share as a going concern, and recommend its purchase . . ."

(i) As of the same date, W. A. Burnett was also sent to Moultrie, Georgia, by respondent, to make a physical inspection of the plant of said Moultrie Packing Company. He reported thereafter upon its condition and the estimated cost of changes which were recommended. His report indicated that the physical plant was worth about $202,500.

(j) In June, 1917, Swift & Company sent H. C. Wallow, its employe at Chicago, to take charge of the office of said Moultrie Packing Company, and sent F. A. Luchsinger to "watch things" and work with Mr. Brooks, then Manager of said Moultrie Packing Company. Mr. Luchsinger was to be the representative of the respondent, Swift & Company, at said plant. Mr. Brooks remained with said Moultrie Packing Company until about November 1, 1917, but after the coming to Moultrie of said Luchsinger Mr. Brooks was under the direction of respondent, Swift & Company, in his activities at said plant.

(k) August 13, 1917, stockholders of said Moultrie Packing Company held an adjourned annual meeting at Moultrie,

Georgia, at which said W. C. Warren and said C. H. Wallow, each credited with five shares of the capital stock of said Moultrie Packing Company, were present in person, and W B. Traynor, C. A. Peacock, J. J. McGuire, T. H. Ingwersen, H. C. Carr and E. B. Kixmiller were represented by proxies. In all, 798 shares were there represented. All stockholders represented or present at said meeting, except said W. C. Vereen, were then officers or employes of respondent. Swift & Company, and held the stock of said Moultrie Packing Company for the use and benefit of said respondent. Said W. C. Vereen was given five shares of stock, to qualify him as an officer and director, which stock he at once upon securing endorsed in blank and returned to Swift & Company. At said stockholders' meeting of August 13, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, A. B. Kixmiller, O. C. E. Matthies and F. A. Luchsinger, all employes or officers of Swift & Company, were elected directors of said Moultrie Packing Company. W. C. Vereen, then without pecuniary interest in said Moultrie Packing Company, was also elected a director. Said stockholders, at said meeting of August 13th, 1917, also elected the following officers;

T. H. Ingwersen, president; O. C. E. Matthies, vice president; C. H. Wallow, secretary and treasurer; C. A. Peacock, assistant secretary; J. J. McGuire, assistant treasurer. All of said officers were then officers or employes of Swift & Company.

(l) November 3, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, and O. C. E. Matthies, all then officers or employes of respondent, met in Chicago as directors of said Moultrie Packing Company; C. A. Peacock, also an officer of respondent, was also present and acted as Secretary and said officers and employes, acting at the same time as such directors of said Moultrie Packing Company, at the
108 instance and direction of respondent, at said meeting of November 3, 1917, adopted a resolution to sell all the business and property of said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, authorizing and directing the President to carry such sale into effect, and providing that the Company be wound up and liquidated and its assets be distributed among the stockholders in proportion to their holdings.

(m) At a special meeting of stockholders held at Moultrie, Georgia, January 5, 1918, at which F. A. Luchsinger, W. C. Vereen and C. H. Wallow were present in person, and T. H.

Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, O. C. E. Matthies, W. B. Traynor, C. A. Peacock and J. J. McGuire were represented by proxy, said action of said Board of Directors, at its meeting November 3, 1917, selling the property and business of the said Moultrie Packing Company was, at the instance and direction of the respondent, confirmed, and said Moultrie Packing Company was ordered wound up and liquidated, and its assets distributed to stockholders in proportion to their holdings. At said stockholders' meeting of January 5, 1918, 956 shares of the capital stock of said Moultrie Packing Company were represented, being all the outstanding stock except ten shares. All stockholders at said meeting of January 5, 1918, were officers and employes of respondent, Swift & Company, except the said W. C. Vereen, who had no pecuniary interest in the five shares of stock which he then held.

(n) A written instrument, dated November 3, 1917, evidences the sale by said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, of its entire business and plant except real estate, and a deed dated November 24, 1917, evidences the sale by said Moultrie Packing Company of its real estate at Moultrie, Georgia, to Swift & Company. Said written instrument and deed were without consideration (other than nominal) moving to said Moultrie Packing Company Corporation, and constituted and were mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of, respondent's prior illegal acquisition of the capital stock of the said Moultrie Packing Company.

Paragraph Five: That:

(a) On or about July 24, 1917, respondent, Swift & Company, acquired by purchase the entire outstanding capital stock of said Andalusia Packing Company, and caused said capital stock to be reissued to numerous persons who were then officers or employes of respondent, which persons held such stock for the use and benefit of respondent. In the month of August, 1917, respondent, through such stock ownership, assumed complete possession and control of the plant, assets and business of said Andalusia Packing Company, and at all times thereafter retained said possession and control. Details of such acquisition and control are in substance as follows:

(b) On or about October 8, 1915, T. E. Henderson, and other residents of Andalusia, Alabama, and in the neighbor-

hood thereof, organized said Andalusia Packing Company, under the laws of the State of Alabama, with power to build, operate and maintain a packing house or packing plant or cold storage buildings and to engage in, carry on and operate a general packing-house and cold-storage business. Said Andalusia Packing Company had an authorized capital stock of $250,000, all of one class, divided into 5,000 shares of
109 $50 each, par value. Said stock was sold to about 150 to 200 subscribers in the City of Andalusia and the neighborhood thereof, until about 2665 shares of such stock were outstanding.

(c) After the organization of said Andalusia Packing Company, and prior to July, 1916, said corporation constructed a packing plant in said City of Andalusia.

(d) About June, 1916, said plant began the operations of purchasing and slaughtering livestock and conducting a general packing and cold storage business, although the volume of said business was not large until October, 1916, and thereafter. Said Andalusia Packing Company secured its livestock principally in the surrounding territory, and found a market for its goods in the State of Alabama, Georgia and Florida, and other States. Its principal output was pork and pork products. Its business grew rapidly and it found a ready and profitable market for its products.

(e) Late in May, or early in June, 1917, F. A. Hunter, of St. Louis, General Manager of respondent, Swift & Company, of National Stock Yards, East St. Louis, Illinois, and H. C. Carr, of the livestock-buying and dressed beef department of respondent, Swift & Company, visited Andalusia, Alabama, and inspected the plant of said Andalusia Packing Company. They had met President T. E. Henderson, and after the inspection of said plant, called upon him at his office in a bank in Andalusia, in which he was also an officer. Livestock and packing-house conditions were discussed, and said Hunter, before leaving, asked said Henderson if he and his associates wanted to sell their plant. Said Henderson replied that he had not thought of it, and anticipated that there might be trouble with stockholders if such a sale were attempted. Said Hunter finally told said Henderson that if he and his associates wished to sell said Andalusia plant, to write said Carr at Chicago. Said Henderson replied that he would prefer to put it in this way: "If you gentlemen take a notion that you want to buy this plant, you let me know." That ended the conversation at the time.

(f) Ten days or two weeks thereafter, said Carr wrote said Henderson a letter concerning the purchase of said Andalusia Packing Company plant, and said Henderson replied by telegram, dated June 5, 1917, advising said Carr to send a representative to "discuss matter." Said Carr wired said Henderson, June 6, 1917, that he would be in Andalusia June 8, 1917, and said Henderson by wire made an appointment with said Carr at said Henderson's office in Andalusia on that date.

(g) Said Carr kept said appointment, meeting said Henderson at Andalusia, June 8, 1917, and also meeting A. C. Darling, a stockholder, and then Secretary of said Andalusia Packing Company. As a result, said Henderson and said Darling gave said Carr an agreement in writing, running to H. C. Carr, "for Swift and Company," amounting to a sort of option at $75 per share, par value $50, until June 27, 1917, upon the capital stock held individually by said Henderson, and said Darling, in said Andalusia Packing Company, being 144 shares owned by said Darling and 130 shares owned by said Henderson. Said Darling and said Henderson agreed, also, to use their best efforts toward buying the remaining shares of stock in said Andalusia Packing Company at $75 per share, for respondent. In the event of their failing
110 to secure the other stock, the option upon their own stock was not to bind them.

(h) Telegrams were exchanged thereafter between said Carr and said Henderson, resulting in a telegraphic confirmation by said Henderson, June 26, 1917, of the sale of said 2665 shares of the capital stock of said Andalusia Packing Company, at $70 a share. The facts developed in this proceeding do not fully reveal the reason why the price for said capital stock was finally fixed at $70, rather than $75, per share, the price named in said option, but there were some indications that respondent let it be known to said Henderson and said Darling that an alternative proposition was then being considered by respondent of establishing a packing plant in Montgomery, Alabama. Said Carr and said Henderson also corresponded as to details of such sale, such as the assumption of debts of said Andalusia Packing Company by respondent; in relation to outstanding accounts; inventory files and other details, having exchanged letters June 28 and July 2 and 9, 1917.

(i) Respondent, Swift & Company, sent its attorney, R. E. Fisher, to Andalusia, Alabama, prior to July 11, 1917, and said attorney examined the corporate records of said Anda-

lusia Packing Company and the titles to its properties, and reported favorably by telegram to Swift & Company's attorneys in Chicago, July 11, 1917, and to Louis F. Swift, President of respondent in Chicago, by letter of July 14, 1917. Respondent, Swift & Company, also sent its auditor, O. C. E. Matthies, to Andalusia, who checked up inventories and accounts and made a report thereon; and the construction department of respondent inspected and reported upon the plant of said Andalusia Packing Company. All these matters are summarized in a memorandum dated July 20, 1917, signed by said Carr and addressed by initials to several officers of respondent. At this time said Andalusia Packing Company showed a surplus of $62,724.32, as a result of operations up to May 1, 1917.

(j) Certain agreements of guarantee dated July 24, 1917, fixing definitely outstanding notes of said Andalusia Packing Company, and certifying that the shares of capital stock sold were the only shares outstanding, were made by said Henderson and said Darling with the officers of respondent, Swift & Company.

(k) Assignments in blank of certificates covering all the shares of capital stock of said Andalusia Packing Company then outstanding were secured from all the stockholders by said Henderson and Darling, in the course of a few weeks following their giving of an option on their capital stock to respondent.

(l) After all said stock had been thus secured, said Henderson and said Darling proceeded with the certificates thereof to Chicago, and on July 24, 1917, said certificates of said stock were delivered by said Henderson and Darling in the Directors' room of respondent in Chicago, assigned in blank, to a representative of respondent, Swift & Company. Said H. C. Carr, T. H. Ingwersen and L. A. Carton, of respondent, being present at the time.

(m) Respondent, Swift & Company, by its check, paid said Henderson $186,550 for said 2665 shares of capital stock of said Andalusia Packing Company, and said payment
111 was entered in the investment ledgers of respondent, Swift & Company.

(n) Said Swift & Company sent to Andalusia, Alabama, to take control of the business and property of said Andalusia Packing Company, about July 16, 1917, G. D. Rogers and C. B. Colt, both then employes of respondent, and said Rogers and said Colt, immediately upon the acquisition of said stock by respondent, July 24, 1917, assumed such con-

trol on behalf of respondent. T. G. Conner, former superintendent of said plant at Andalusia, remained in the employ of said Andalusia Packing Company until about November, 1917, but during that time worked under the direction of respondent.

(o) While in said Directors' room, said Henderson, as President, and said Darling, as Secretary, of said Andalusia Packing Company, signed new certificates of stock in said Andalusia Packing Company to T. H. Ingwersen, for 820 shares; to G. D. Rogers, for 100 shares, to H. C. Carr for 820 shares, to W. B. Traynor for 825 shares, to T. E. Henderson for 100 shares—being in all 2665 shares, the total capital stock of said Andalusia Packing Company then outstanding. All persons to whom said stock was then so assigned were then officers or employes of respondent, except said T. E. Henderson, and said Henderson immediately assigned his said certificates of stock in blank and returned it to a representative of Swift & Company, respondent. The stock was then placed nominally in the name of said Henderson, to qualify him as a director and as Vice President of said Andalusia Packing Company, at the request of said Carr, of respondent, Swift & Company.

(p) T. E. Henderson, T. H. Ingwersen and G. D. Rogers, represented by proxy to H. C. Carr; H. C. Carr and W. C. Traynor, holding 2665 shares of stock of said Andalusia Packing Company, being all of said stock then outstanding, met at the Northeast corner of Exchange and Packers Avenues, Chicago, July 24, 1917, and amended the by-laws of said Andalusia Packing Company as to the places at which corporate business of said Andalusia Packing Company might thereafter be transacted, and as to other points. Said Henderson, who has secured in advance resignations of officers and directors of said Andalusia Packing Company in office before said stock had been acquired by respondent, presented such resignations at said meeting; said resignations were accepted and the following directors were elected: W. B. Traynor, T. H. Ingwersen, G. D. Rogers, H. C. Carr—all officers or employes of respondent. Said Henderson was permitted to remain a director, at the request of said Carr.

(q) Said directors held a special meeting, at the same place, immediately after said stockholders' meeting, all except said Rogers being present, and after having accepted the resignation of the former officers of said Andalusia Packing Company, elected the following officers:—T. H. Ingwer-

sen, president; T. E. Henderson, First Vice President; C. A. Peacock, Secretary; C. M. Williamson, Treasurer, and J. J. McGuire, Assistant Treasurer—all of said officers so elected being the officers or employes of respondent, except said Henderson, who accepted his office at the request of said Carr, of respondent, Swift & Company. It was resolved by said directors that said G. D. Rogers should thereafter countersign all checks of said Andalusia Packing Company drawn against its funds in bank, and C. B. Colt, also an employe of respondent, was made statutory agent of said corporation in Alabama.

112 (r) At a special meeting of the Board of Directors of said Andalusia Packing Company, held at Union Stock Yards, Chicago, August 7, 1917, C. M. Williamson, as Treasurer, was authorized to sign checks against the funds in bank of said corporation, and said checks were to be countersigned by said G. D. Rogers.

(s) At a special meeting of the directors of said Andalusia Packing Company at Union Stock Yards, Chicago, August 14, 1917, C. B. Colt was elected and designated to succeed to the functions of C. M. Williamson, Treasurer of said corporation.

(t) Stockholders of said Andalusia Packing Company, including said H. C. Carr, W. B. Traynor and T. E. Henderson, representing the capital stock of said corporation to the number of 1745 shares, met at Union Stock Yards, Chicago, in annual meeting, October 8, 1917, and reelected the directors elected July 24, 1917.

(u) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the then directors of the Andalusia Packing Co., met October 29, 1917, at Union Stock Yards, Chicago, and reelected the officers of said corporation then holding.

(v) Directors of said Andalusia Packing Company met at Union Stock Yards, Chicago, March 26, 1918, T. H. Ingwersen, W. B. Traynor and H. C. Carr being present, with C. A. Peacock acting as Secretary, and resolved that a dividend of $97,276.14 be declared, payable March 30, 1918, to stockholders of record on the books of the Company on that date.

(w) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the board of directors, with C. A. Peacock, secretary, of the Andalusia Packing Company, all being officers or employees of respondent, and acting at the same time, as directors and secretary of said Andalusia Packing Co., purported to meet at the office of said company in Chi-

cago, March 30, 1918, and at the instance and for the benefit of respondent, beneficial owners of all the stock of said Andalusia Packing Co., declared a dividend of $97,276.14; and at the same meeting, acting in the above dual capacity, said persons purported to accept an offer "to purchase all the property and business of this company", and purported to authorize and instruct "the proper officers of this company" "to convey, assign and transfer to said Swift & Co. all of the property and business of this company by proper instruments of conveyance." Such instruments of transfer were executed as of and each bears date, both as to execution and acknowledgment as of March 30, 1918, (Com's. Exs. 187 and 188). Respondent directed the record of said alleged meeting of March 30, 1918, and the instruments of transfer designated, to be prepared by respondent's general counsel, in a letter dated April 9, 1918, and such record and such instrument were in fact executed between April 8, 1918, and April 23, 1918, the date when the executed instruments were returned to respondent's counsel by respondent's secretary.

(y) By a certain deed in writing, and a certain other instrument in writing, both dated March 30, 1918, said Andalusia Packing Company, through its President, T. H. Ingwersen, and its Secretary, C. A. Peacock, transferred
113 to respondent, Swift & Company, respectively, the real estate at Andalusia, Alabama, of said Andalusia Packing Company, and the business and physical assets of said Andalusia Packing Company, wherever situated. Said written instrument of sale, and deed, were without consideration (other than nominal) moving from respondent to said Andalusia Packing Company corporation, and they constituted, and were, mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of respondent's prior illegal acquisition of the capital stock of the said Andalusia Packing Company.

Paragraph Six: That said acquisition by purchase of the capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, Swift & Company, as set forth in Paragraphs Four and Five hereof, respectively, was fully consummated, and full control of the business and property of said Moultrie Packing Company and of said Andalusia Packing Company by respondent was secured by means of said acquisition of stock before the physical assets of said Moultrie Packing Company and said Andalusia Packing Company, as such, were nominally transferred to respondent.

Paragraph Seven: That:

(a) Prior to the acquisition of said stock of said Moultrie Packing Company and said Andalusia Packing Company by respondent, as set forth in Paragraphs Four and Five hereof, said corporations whose stock was so acquired were in direct competition with each other and with the respondent, in the sale of meat and meat products in interstate commerce; but within a few weeks after said acquisition of said stock, said competition of said Moultrie Packing Company, and said competition of Andalusia Packing Company, with each other and with respondent wholly ceased and has not since been resumed. Instances of said competition may be noted as follows:

(b) Beginning late in 1914, or early in 1915, said Moultrie Packing Company sold its said meats and meat products in Atlanta, Georgia, and many other cities and towns in the State of Georgia, to the same dealers to whom the respondent at the same time sold or endeavored to sell similar products shipped into Atlanta and said other cities and towns in the State of Georgia, in interstate commerce, and sold and offered for sale in interstate commerce in said cities and towns.

(c) M. M. Stanaland, for many [illegible]as (18 months or more), prior to October 22, 1917, was [illegible]roker in meats and meat products whose principal place of business was in Atlanta, Georgia, and who represented said Moultrie Packing Company. Prior to August, 1917, said Stanaland sold and delivered in Atlanta, Georgia, and the neighborhood thereof, meats and meat products manufactured by said Moultrie Packing Company, aggregating many scores of thousands of dollars in value, and estimated in volume at one to three carloads per week; and in such sale of said products, prior to August, 1917, met from day to day, in competition, the salesmen of said respondent, who were selling or endeavoring to sell similar products, shipped into Atlanta in interstate commerce.

114 (d) Immediately following the taking over of the stock and control of said Moultrie Packing Company, by respondent, said Stanaland experienced difficulties in securing from the said Moultrie Packing Company his usual supplies of meat and meat products, and prices of said meat and of some of said products were gradually advanced by said Moultrie Packing Company under the direction of respondent, so as to make it more and more difficult for said Stanaland to market said meats and meat products to his cus-

tomers; such prices so fixed by said Moultrie Packing Company for said Stanaland being at times higher than the prices at which the branch house of respondent in Atlanta was permitted at the same time to sell identical products in the same territory. On October 22, 1917, the account of said Moultrie Packing Company was entirely withdrawn from said Stanaland, and said Stanaland ceased to be a broker for said Moultrie Packing Company, and competition between said Moultrie Packing and respondent, which had been nominal since July, 1917, wholly ceased in Atlanta and in the neighborhood thereof immediately upon said Stanaland's dismissal.

(e) Before said respondent had acquired the stock of said Moultrie Packing Company, the sale of meat and meat products of said Moultrie Packing Company by said Stanaland tended to lower the prices secured by respondent for similar products in Atlanta and in the neighborhood thereof, since the said Stanaland, for said Moultrie Packing Company, sold largely what is known as "soft pork," or peanut-fed pork, which could be produced and sold at a lower price in that locality than could the Western, or corn-fed pork, shipped long distances and sold by respondent at that time in that territory. Said peanut-fed pork was generally considered of a lower grade than Western, or corn-fed pork, and was sold in that market at a differential of one to five cents, or an average differential of about 2c a pound lower than Western pork; at the same time its flavor was liked by consumers in that locality, and said peanut-fed pork was in such active demand that it was difficult to secure a supply sufficient to meet such demand.

(f) From and after September, 1916, and up to July 24, 1917, J. W. Clarke Company, then brokers in Atlanta, Georgia, dealing in meat and meat products, sold as brokers the products of said Andalusia Packing Company, in Atlanta and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products, also shipped to and sold in Atlanta in interstate commerce; and said Andalusia Packing Company, through its broker, J. W. Clarke Company, was likewise, at this time, in competition with said Moultrie Packing Company in Atlanta and the neighboarhood thereof, in the sale of meats and meat products. Said J. W. Clarke Company, during the period from September, 1916, to July 24, 1917, sold in Atlanta and the neighborhood thereof, meats and meat products, largely soft, or peanut-fed pork products, and shipped to them in

interstate commerce by said Andalusia Packing Company, of the value of many thousands of dollars, estimated at $4,000 or more per week. Said pork was usually sold at a differential below Western, or corn-fed pork, but was in active demand in said territory.

(g) Immediately after respondent had acquired the stock of said Andalusia Packing Company, and assumed, through the acquisition of said stock, control thereof, said J. W. Clarke Company found it increasingly difficult to get meat and meat products from said Andalusia Packing Com-
115 pany to fill its orders; prices of said products were advanced by said Andalusia Packing Company, at the instance of respondent, so as to make their sale increasingly difficult, and said prices were at times higher than the prices at which the branch house of respondent in Atlanta was permitted to sell identical products in the same territory.

(h) Immediately after the acquisition by respondent of the captial stock of said Andalusia Packing Company, July 24, 1917, the Manager in charge of said Andalusia Packing Company for respondent, adopted the policy of selling the products of said Andalusia Packing Company through respondent's branch houses in Atlanta and elsewhere. As a consequence, said J. W. Clark Company was grdually eliminated from the business, and about October, 1917, was cut off from shipments by and receipts from said Andalusia Packing Company. Competition of said Andalusia Packing Company with respondent and with said Moultrie Packing Company in Atlanta, Georgia, and the neighborhood thereof, which was nominal after July 24, 1917, wholly ceased about October, 1917.

(i) Between October, 1916, and July, 1917, said Moultrie Packing Company sold and shipped its meat and meat products in interstate commerce, to Jacksonville, Florida, in competition with respondent. Such sales were made through Samuel T. Smith, broker for said Moultrie Packing Company, who sold in Jacksonville, Florida, and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products at the same time in interstate commerce. The sales of said Samuel T. Smith of the products of said Moultrie Packing Company had amounted, during the period he so represented said Company in Jacksonville, to many thousands of dollars, and estimated at a volume of two carloads of said products per week.

(j After respondent had acquired the capital stock of

said Moultrie Packing Company said Smith found it increasingly difficult to get the meats and meat products of said Moultrie Packing Company at prices at which they could be sold in Jacksonville and the neighborhood thereof, and, at times, respondent, through its branch house in Jacksonville, sold said products at prices substantially lower than said Smith was permitted to make to his customers. After July, 1917, said Smith sold but nominal amounts of said products of said Moultrie Packing Company in Jacksonville and the neighborhood thereof, and in September, 1917, his sales of said products wholly ceased and he ceased to represent said Moultrie Packing Company in the sale of its products in said territory. Thereafter, the products of said Moultrie Packing Company, when sold at all in Jacksonville and the neighborhood thereof, were sold only through the branch house of respondent, and competition between respondent and said Moultrie Packing Company in the sale of meat products wholly ceased after September, 1917, in Jacksonville and the neighborhood thereof.

(k) Between September, 1916, and July 24, 1917, said Andalusia Packing Company sold and shipped its meats and meat products to Birmingham, Alabama and the neighborhood thereof, to the same dealers to whom, at the same time, respondent sold and endeavored to sell similar products shipped into Birmingham, Alabama, and the neighborhood thereof, in interstate commerce.

(l) During said period, from October, 1916, to July 24, 1917, E. P. Allen & Company, brokers dealing in meats
116 and meat products, represented said Andalusia Packing Company in the sale of its said products in Birmingham and the neighborhood thereof, where said E. P. Allen and his salesmen during said period constantly met in competition salesmen of respondent selling similar products. Said Allen and his salesmen in said period solicited the same customers and sold similar products to the same dealers as respondent. Said E. P. Allen & Company sold during said period such products of said Andalusia Packing Company to the volume of many thousands of dollars, the volume being estimated at two to three carloads a week. Said products were of soft, or peanut-fed pork and were sold at a differential lower than Western pork, but were in active demand in said territory.

(m) After respondent had acquired the capital stock of said Andalusia Packing Company, July 24, 1917, said E. P.

Allen & Company found it increasingly difficult to secure the products of said Andalusia Packing Company to supply its customers, and in many instances the prices which said E. P. Allen & Company were instructed to secure for said products by said Andaluia Packing Company were substantially higher than the prices at which the branch house of respondent in Birmingham, Alabama, was permitted to sell the same products in Birmingham and the neighborhood thereof. About the latter part of October, 1917, said Andalusia Packing Company ceased to sell its said products through said E. P. Allen & Company, and thereafter sold said products solely through the branch house or other sales organization of respondent, and competition between said Andalusia Packing Company and respondent, which had been nominal after July 24, 1917, wholly ceased in Birmingham, Alabama, and the neighborhood thereof, as well as elsewhere.

(n) Similar competition between respondent, said Andalusia Packing Company and said Moultrie Packing Company, prior to said acquisition by respondent of the stock of said Andalusia Packing Company and said Moultrie Packing Company, took place in scores of cities and towns in the State of Georgia, Florida and Alabama, and wholly ceased soon after said acquisition of said stock, and before the purchase by respondent of the physicial assets, as such, of said Andalusia Packing Company and said Moultrie Packing Company.

Paragraph Eight: For many years prior to the times that said Moultrie Packing Company and said Andalusia Packing Company began business many dealers in meats and meat products, including respondent, offered their products for sale to dealers in the territory in which said Moultrie Packing Company and said Andalusia Packing Company did the bulk of their business—namely, in the States of Georgia, Florida and Alabama. Sale in said territory of said products of said Moultrie Packing Company and said Andalusia Packing Company, from the autumn of 1916 to July, 1917, materially increased competition in said territory in said products, especially in soft or oily pork products. For a time after the acquisition by the respondent of the stock of said Moultrie Packing Company and said Andalusia Packing Company, there was a substantial lessening of competition in said territory in the sale of said oily pork products, and a complete elimination of competition, in said product and other meat and meat products between

respondent and said Moultrie Packing Company and said Andalusia Packing Company, and between said Moultrie Packing Company and said Andalusia Packing Company.

117 Paragraph Eight and a Half: Respondent, in the spring of 1917, decided to enter the southern field in the packing industry, wherein the Moultrie Packing Company and the Andalusia Packing Company were operating, either by building or acquiring a packing plant, after respondent's representatives had reported that at that time, on account of the increasing live-stock production, respondent might profitably enter such field. Respondent's said representative had reported adversely to such entry for the previous two years. Respondent, by its acquisition of the capital stock and control of the said two operating competitive concerns, to-wit, the Moultrie Packing Company and the Andalusia Packing Company, rather than building a plant of its own, not only eliminated the then existing competition between respondent and the concerns whose capital stocks were acquired, but also eliminated all increasing, prospective and potential competition from such concerns, particularly in the purchase of live stock.

Paragraph Nine: That :

(a) Moultrie Packing Company, in 1914, slaughtered 53 head of cattle of a dressed weight of 24,739 pounds, and 2032 hogs, of an aggregate dressed weight of 200,598 pounds; in 1915, said Company slaughtered 1629 cattle of a dressed weight of 396,748 pounds and 32,658 hogs of a dressed weight of 2,199,441 pounds; in 1916, said Packing Company slaughtered 701 cattle of a dressed weight of 196,333 pounds; and 78,125 hogs of a dressed weight of 7,305,506 pounds; for the first six months of 1917, said Company slaughtered 901 cattle of a dressed weight of 252,280 pounds, and 42,421 hogs of a dressed weight of 3,907,909 pounds; in 1914, said Company produced 20,320 pounds of lard; in 1915, 326,580 pounds; in 1916, 1,171,875 pounds, and for the first six months of 1917, 827,575 pounds. It had ample supply of hogs except in three or four summer months, at times many more than it could handle. Said Company found ready sale for its products and its business was highly profitable and growing rapidly; up to the time that respondent acquired its capital stock it was marketing its product through salesmen and brokers.

(b) Andalusia Packing Company, in 1916 slaughtered 21 cattle of a dressed weight of 6,246 pounds and 31,439 hogs

of a dressed weight of 3,065,341 pounds; from January 1, 1917, to May 1, 1917, said Company slaughtered 549 cattle of a live weight of 432,195 pounds and 26,438 hogs of a dressed weight of 2,914,692 pounds. It produced 383,774 pounds of lard in 1916, and 564,293 pounds of lard from January 1, 1917, to May 1, 1917. It had ample supply of live stock, especially hogs, except during three or four summer months. Said Company found a ready sale for its products, and its business was highly profitable and was growing rapidly at the time respondent acquired its capital stock.

(c) Respondent greatly enlarged the capacity of the plant of said Moultrie Packing Company, after having acquired its stock; its slaughter of beef cattle was increased radically, but, except in 1919, its slaughter of hogs at said plant had decreased since the acquisition of the capital stock of said plant by respondent. In the last six months of 1917, at the plant of said Moultrie Packing Company there were slaughtered 2,573 cattle and 26,566 hogs; in 1918, at said plant there were slaughtered 18,008 cattle and 72,666 hogs; in 1919, there were slaughtered at said plant, 10,381 118 cattle and 103,099 hogs; in 1920, at said plant there were slaughtered 8,578 cattle and 65,281 hogs; in the first six months of 1921, there were slaughtered at said plant, 3,626 cattle and 36,080 hogs.

(d) The respondent somewhat enlarged the capacity of said Andalusia Packing Company plant after having acquired its stock, or at least made some improvements in said plant. The slaughter of beef cattle was greatly increased after respondent had acquired the stock of said Andalusia Packing Company, but its slaughter of hogs at said plant, after such acquisition, decreased as compared with the slaughter of hogs at said plant before such acquisition. In the last five months of 1917, there were slaughtered at the plant of the Andalusa Packing Company, 21,186 cattle and 63,976 hogs; in 1919, there were slaughtered at said plant, 11,759 cattle and 61,676 hogs; and in 1920, there were slaughtered at said plant 8,687 cattle and 39,523 hogs; for the first six months of 1921, there were slaughtered at said plant 4,552 cattle and 29,313 hogs.

(e) Respondent Company, in its various plants, in 1917, slaughtered 2,153,908 cattle, 846,472 calves, 3,162,930 sheep and 7,288,169 hogs; in 1919, the year of its largest production, respondent slaughtered in its various plants 2,337,124 cattle, 1,231,262 calves, 4,044,719 sheep and 8,662,824 hogs. Its production fell off radically in 1920. Respondent is one

of the largest two of the meat packers and does business through branches, salesmen and car routes, all over the United States.

(f) In 1919, there were slaughtered in the United States, under federal inspection, as reported officially: 10,989,984 cattle, 3,969,019 calves, 12,691,117 sheep and lambs, 87,380 goats, and 41,611,830 hogs; so that respondent slaughtered more than one-fifth of the cattle and hogs and about one-third of the calves and sheep slaughtered under federal inspection in the year 1919.

Paragraph Ten: That the acquisition of said capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, as described in Paragraphs Four and Five hereof, was not solely for investment, nor acquired in forming a subsidiary corporation under the permissive provisions prescribed in Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Paragraph Eleven: That Section 7 of the Act of Conpress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monoplies, and for other purposes," is and provides in part as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce."

119 Paragraph Twelve: That the acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses of said corporations, following respondent's acquisition of such capital stock suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by re-

spondent under the conditions and circumstances set forth in the foregoing Findings as to the Facts, were and are in violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Conclusion.

The acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent, under the conditions and circumstances set forth in the foregoing Findings as to the Facts, were and are in violation of the provisions of Section 7, of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

(Seal) (signed) VICTOR MURDOCK,
VICTOR MURDOCK,
Acting Chairman.

Dated this 17th day of November, A. D. 1922.

Attest:

(Signed) OTIS B. JOHNSON
OTIS B. JOHNSON,
Secretary.

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4, 1923.

121 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission
v.
Swift & Company.
} Docket No. 453

I, Otis B. Johnson, Secretary of the Federal Trade Commission, do hereby certify that hereunto annexed is a true and correct transcript of the testimony taken in the above entitled case as stipulated by and between attorneys for the respective parties.

That this transcript is certified to the United States Circuit Court of Appeals for the Seventh Circuit, by reason of the filing in the said Court of a petition for review of the order entered by the said Federal Trade Commission under date of August 3, 1922.

OTIS B. JOHNSON,
OTIS B. JOHNSON,
(Seal) *Secretary, Federal Trade Commission.*

Endorsed: Filed Sept. 24, 1923. Edward M. Holloway, Clerk.

123 BEFORE THE FEDERAL TRADE COMMISSION.

Federal Trade Commission,
Petitioner,
vs.
Swift & Company,
Defendant.
} Docket No. 453.

Chicago, Ill., February 9, 1921.
10:00 o'clock A. M.

Before:
G. T. Sadler, Examiner.

Met pursuant to notice.

Appearances.

A. N. Taylor, and D. F. Haycraft, c/o Federal Trade Commission, Washington, D. C., Appearing for the Federal Trade Commission.

A. H. & Henry Veeder, James M. Sheean and Frank L. Horton, Chicago, Ill., appearing for Swift & Company.

127 PROCEEDINGS.

Examiner Sadler: The hearing will come to order.

This is a hearing before the Federal Trade Commission, entitled: Federal Trade Commission vs. Swift & Company, in Docket 453.

Any person desiring a typed copy of the proceedings of the commission in the matter now pending, can obtain an order blank for that purpose from the official stenographer. The price for the same, established by contract with the stenographer, who is not a Government employe, is at the rate of 15 cents per page.

Who is representing the Commission in this proceeding?

Mr. Taylor: A. N. Taylor and D. F. Haycraft.

Examiner Sadler: And the Respondent?

Mr. Horton: The Respondent is represented by A. H. & Henry Veeder, James M. Sheean and Frank L. Horton.

Examiner Sadler: Counsel for the Commission may proceed.

Mr. Taylor: I will ask Mr. Smithwick to take the witness stand.

128 J. G. SMITHWICK called as a witness for the Commission at Chicago, Illinois, on February 9, 1921, after having been first duly sworn, testified in substance as follows (pages 6-115):

That he is General Accountant for Swift & Company and occupied that position for six years; that he received certain subpoenas from the Federal Trade Commission and produced certain documents under those subpoenas. Among the documents produced were copies of five letters from Louis F. Swift and Edward F. Swift, all dated May 19, 1917. Mr. Smithwick testified that he obtained these copies from the files of Swift & Company. (copies were introduced in evidence and marked: "Commission's Exhibit 1 to 5 inclusive")

That Edward F. Swift is Vice President of Swift & Company and Louis F. Swift is President of Swift & Company.

Mr. Smithwick, pursuant to subpoena, thereupon produced a letter dated November 23, 1917 from Swift & Company to Albert H. and Henry Veeder, and testified that he obtained this letter from the files of Albert H. and Henry Veeder. (the letter was received in evidence and marked: "Commission's Exhibit 6).

Mr. Smithwick, pursuant to subpoena, thereupon produced a carbon copy of letter, dated November 26, 1917, from Albert H. and Henry Veeder to Swift & Company, taken from the files of Albert H. and Henry Veeder, and testified that it was carbon copy of letter which was mailed by
129 Albert H. and Henry Veeder to Swift & Company, and that the original was signed by Albert H. and Henry Veeder, per MW. (letter was received in evidence and marked: "Commission's Exhibit 7")

Mr. Smithwick, pursuant to subpoena, thereupon produced a letter from Swift & Company, per J. G. S. to Messrs Albert H.. and Henry Veeder. (the letter was received in evidence and marked: "Commission's Exhibit 8")

Mr. Smithwick, pursuant to subpoena, thereupon produced a carbon copy of a letter, dated November 30, 1917, from Albert H. and Henry Veeder to Swift & Company, and testified that it was taken from the files of Albert H. and Henry Veeder, and that the original copy was signed, Albert H. and Henry Veeder. (the letter was received in evidence and marked: Commission's Exhibit 9")..

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of another letter also dated November 30, 1917 from Albert H. and Henry Veeder to Swift & Company, and testified that this copy was obtained from the office of Albert H. and Henry Veeder, and that the original was signed by Albert H. and Henry Veeder. (the letter was received in evidence and marked: "Commission's Exhibit 10").

Mr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter, dated December 18, 1917, addressed to Mr. F. S. Hayward, Secretary of Swift & Company, and testified that the original letter was signed, Albert H. and Henry Veeder, that this copy was taken from the records of Al-
130 bert H. and Henry Veeder. (copy of letter was received in evidence and marked: "Commission's Exhibit 11"

Mr. Smithwick, pursuant to subpoena, thereupon produced a letter dated December 19, 1917, signed by F. S. Hayward for Swift & Company to Albert H. and Henry Veeder, and testified that the letterhead was marked: "F. S. Hayward, Secretary," that Mr. Hayward was Secretary at that time, and was Secretary of Swift & Company prior to 1911 to about January 1, 1920. (the letter was received in evidence and marked: "Commission's Exhibit 12")

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of letter, dated December 20, 1917, from Albert H. and Henry Veeder to F. S. Hayward, Secretary of Swift & Company, together with copies of call of special meeting of stockholders of the Moultrie Packing Company, minutes of special meeting of stockholders of the Moultrie Packing Company, and notice of special meeting of stockholders of the Moultrie Packing Company, and affidavit of C. H. Wallow, Secretary of the Moultrie Packing Company, and testified that the carbor copies of letter and papers described above, attached hereto, were taken from the files of Albert H. and Henry Veeder that the carbon copy of the letter is the carbon copy of original letter which was mailed to Mr. Hayward. (The carbon copy and the papers attached hereto, described above, were received in evidence and marked: Commission's Exhibit 13-13A-13B-12C-13D").

131 Mr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter, dated January 10, 1918, from Albert H. and Henry Veeder to Swift & Company, and testified that it was a carbon copy of original letter sent to Swift & Company and was obtained from the files of Albert H. and Henry Veeder, and that the original letter bore the

signature, Albert H. and Henry Veeder. (copy of letter was received in evidence and marked: "Commission's Exhibit 14").

Mr. Smithwick, pursuant to subpoena, thereupon produced letter dated January 11, 1918, written on letterhead of Swift & Company by F. S. Hayward, Secretary, bearing the signature of F. S. Hayward, addressed to Albert H. and Henry Veeder, and testified that the signature of F. S. Hayward was apparently written by his clerk, Miss Webb. (letter was received in evidence and marked: "Commission's Exhibit 15").

Mr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter from Albert H. and Henry Veeder to F. S. Hayward, Secretary of Swift & Company, dated January 14, 1918, and testified that this was carbon copy of original letter mailed to Swift & Company, and that the original letter bore the signature of Albert H. and Henry Veeder. (copy of letter was received in evidence and marked: "Commission's Exhibit 16").

Hr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter from H. C. Carr to T. E. Henderson, dated June 28, 1917, and testified that H. C. Carr
132 was an employe of Swift & Company and that this copy was taken from the files of Swift & Company, and that copies of this letter were furnished to Louis F. Swift, President of Swift & Company, Edward F. Swift, Vice President of Swift & Company, Gustavus F. Swift, Jr., Department Head and Director of Swift & Company, L. A. Carton, Treasurer and Director of Swift & Company, Henry Veeder, General Counsel, John M. Chaplin, Accountant for Swift & Company. (copy of letter was received in evidence and marked: "Commission's Exhibit 17").

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of letter from T. E. Henderson to H. C. Carr, dated July 2, 1917, and testified that carbon copy of the copy produced was found by him in the files of Swift & Company, and that copies of the letter were made and sent to Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, L. A. Carton, John M. Chaplin and Henry Veeder; (copy of letter was received in evidence and marked: "Commission's Exhibit 18"). that it is and was the custom of employes of Swift & Company to indicate to their stenographers parties to whom copies of communications were to be furnished, and it is a practice to indicate on the carbons the parties for

which the copies are intended; that this custom prevailed in regard to letters coming in; copies of which were sent around to the various people, officers or heads.

133 Referring to Exhibit 1, which he identified, and having his attention called to—"C. H. S., G. F. S. Jr., W. B. T. and H. C. C.," stated that C. H. S. referred to Charles H. Swift, an employe of Swift & Company, G. F. S. Jr., Gustavus F. Swift, Jr. a Director of Swift & Company, W. B. T., W. B. Traynor, Clerk to the President of Swift & Company, H. C. C., H. C. Carr, Department Head of Swift & Company, and referring to Exhibit 2, upon which appear the words: "C. H. S., G. F. S. Jr., W. B. T., and L. A. C.," stated that they referred to—Charles H. Swift, G. F. Swift, W. B. Traynor and L. A. Carton, and that Mr. Carton is Treasurer of Swift & Company.

Referring to Exhibit 3, he made the same answers as he did to Exhibit 1.

Referring to Exhibit 4, he made the same answers as he did to Exhibit 1.

Referring to Exhibit 5, he made the same answers as he did to Exhibit 1.

Mr. Smithwick, pursuant to subpoena, thereupon produced a letter dated July 6, 1917 from H. C. Carr, addressed to Robert E. Fisher. (letter was received in evidence and marked: "Commission's Exhibit 19").

Mr. Smithwick, pursuant to subpoena, thereupon produced a carbon copy of letter, dated July 9, 1917, from H. C. Carr to T. E. Henderson, and testified that copy of letter was taken from the files of Albert H. and Henry Veeder, and

134 that the words: "Copies, L. F. S., E. F. S., H. V., G. M. C.," appearing thereon, refer to Louis F. Swift, Edward F. Swift, Henry Veeder and John M. Chaplin. (letter was received in evidence and marked: "Commission's Exhibit 20").

Mr. Smithwick, pursuant to subpoena, thereupon produced a telegram dated July 11, 1917, from R. E. Fisher to Albert H. and Henry Veeder. (telegram was received in evidence and marked: "Commission's Exhibit 21").

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of letter dated July 14, 1917, from Albert H. and Henry Veeder to Louis F. Swift, and testified that this copy was obtained from the files of Albert H. and Henry Veeder; that it was a duplicate of the original letter and that the original letter was signed, Albert H. and Henry Veeder. (copy of

letter was received in evidence and marked: "Commission's Exhibit 22").

Mr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter, dated July 20, 1917, from H. C. Carr to W. B. Traynor, and testified that this is correct copy of letter in the office of Swift & Company, and that the words: "Copies, G. F. S. Jr., L. A. C., H. V., R. C. M., appearing upon the letter are the initials of Gustavus F. Swift, Jr., L. A. Carton, Henry Veeder and R. C. McManus, and that Mr McManus is attorney for Swift & Company, employed in the office of Swift & Company. (copy of letter was received in evidence and marked: "Commission's Exhibit 23").

135 Mr. Smithwick, pursuant to subpoena, thereupon produced letter dated July 25, 1917, from Albert H. and Henry Veeder to G. D. Rogers, and testified that it was taken from the files of Albert H. and Henry Veeder, and that the original letter was signed, Albert H. and Henry Veeder. (letter was received in evidence and marked: "Commission's Exhibit 24").

Mr. Smithwick, pursuant to subpoena, thereupon produced carbon copy of letter, dated August 18, 1917, from Albert H. and Henry Veeder to C. A. Peacock, and stated that this was carbon copy of original letter signed by Albert H. and Henry Veeder, and that copy of letter was sent to W. B. Traynor, Clerk in the office of the President of Swift & Company. (letter was received in evidence and marked: "Commission's Exhibit 25").

Mr. Smithwick, pursuant to subpoena, thereupon produced a letter dated April 9, 1919 from Swift & Company to Albert H. and Henry Veeder. (letter was received in evidence and marked: "Commission's Exhibit 26").

Mr. Smithwick, pursuant to subpoena, thereupon produced letter dated April 23, 1918, written on the stationery of Swift & Company, F. S. Hayward, Secretary, apparently signed by F. S. Hayward. (letter was received in evidence and marked: "Commission's Exhibit 27").

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of minutes of meeting held in the Directors

136 Room of Swift & Company, on the Fourth Floor, Tuesday, May 22, 1917, 9:15 A. M., attended by Messrs Louis F. Swift, Gustavus F. Swift, Jr., A. B. Swift, J. M. Chaplin, H. C. Carr, F. A. Hunter, O. C. E. Mathies, F. J. King, F. A. Luchsinger, and W. B. Traynor, and testified that the words: "Copies, G. F. Swift. Jr., H. H. S., E. L. W., O. C. E. M.,

H. V., H. C. C., and J. M. C." were placed at the head of this copy pursuant to the custom which he just described with regard to copies of letters, and that the initials, H. H. S., represent Harold H. Swift, Department Manager, Swift & Company, initials O. C. E. M., O. C. E. Mathies, Accountant in May, 1917, for Swift & Company, E. L. W. represnts E. L. Ward, Office Manager in May, 1917 of Swift & Company, and that the copy produced was original copy of the original minutes. (the minutes were received in evidence and marked: "Commission's Exhibit 28").

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of General Journal record of the amount of money expended by Swift & Company for the capital stock of the Andalusia Packing Company, and testified that Swift & Company's ledger contained an entry showing that $886,550 was paid out by Swift & Company for the stock of the Andalusia Packing Company. (This paper was received in evidence and marked: "Commission's Exhibit 29").

Mr. Smithwick, pursuant to subpoena, thereupon produced copy of record showing stock investment account
137 covering 2665 shares of the Andalusia Packing Company by Swift & Company. (This paper was received in evidence and marked: "Commission's Exhibit 30").

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified the minute book of the Moultrie Packing Company, from which book counsel for the Commission offered in evidence pages 6 and 7, which were received in evidence and marked: "Commission's Exhibit 31," and pages 8 and 9 marked: "Commission's Exhibit 32."

Counsel for the Commisison also offered in evidence pages 17 and 18, taken from the minute book, which were received in evidence and marked: "Commission's Exhibit 33," also the minutes of the adjourned annual meeting of the stockholders of the Moultrie Packing Company held August 13, 1917, pages 100 and 101 of the minute book, which were received in evidence and marked: "Commission's Exhibit 34."

Mr. Smithwick, thereupon continued his testimony, that F. A. Luchsinger is an employee of Swift & Company; that on August 13, 1917 he was employed by the Moultrie Packing Company, and prior to that time he had been an employee of Swift & Company in the capacity of Assistant Manager of the Provision Department; and that he left Swift & Company to take a position with the Moultrie Packing Company about August 13, 1917; that Mr. C. H. Wallow in August, 1917, was

Office Manager for the Moultrie Packing Company, and
138 previous to that time had been an Accountant for Swift & Company; that W. C. Vereen was a banker at Moultrie, Ga., W. B. Traynor whose name appears as a stockholder of the Moultrie Packing Company in Exhibit 34 is the same Mr. Traynor who had been identified as Clerk to the President of Swift & Company; that C. A. Peacock is at present Secretary of Swift & Company, and August 13, 1917 was Assistant Secretary at Swift & Company; that J. J. McGuire, according to Exhibit 34, is the owner of 150 shares of stock of the Moultrie Packing Company, and is Assistant Treasurer of Swift & Company; that T. H. Ingersen was Department Manager of Swift & Company; H. C. Carr is the same Mr. Carr that had been identified by Mr. Smithwick before in his testimony; that E. B. Kixmiller is an attorney for Swift & Company. Counsel for the Commission thereupon offered in evidence minutes of the meeting of the Board of Directors of the Moultrie Packing Company of November 3, 1917, pages 104 and 105 of the minute book of that Company identified by Mr. Smithwick. They were received and marked: "Commission's Exhibit 35").

In like manner the minutes of the special meeting of the stockholders of the Moultrie Packing Company of January 5, 1918, appearing on page 106 of the minute book were admitted in evidence and marked: "Commission's Exhibit 36," and the minutes of the special meeting of stockholders of the Moultrie Packing Company held on January 5, 1918, appearing on pages 107 and 108 of the minute book were re-
139 ceived in evidence and marked: "Commission's Exhibit 37"; affidavit of C. H. Wallow of mailing notices of special meeting of the stockholders of the Moultrie Packing Company, held the 5th of January, 1918, appearing on page 109 of the minute book were received in evidence and marked: "Commission's Exhibit 38"; notice of special meeting of stockholders of the Moultrie Packing Company, to be held on January 5, 1918, appearing on page 110 of the minute book was received in evidence and marked: "Commission's Exhibit 39."

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified stock certificate book of the Moultrie Packing Company taken from the files of Swift & Company, and testified from examination of the book that the first 150 certificates had been cancelled and are attached to the stub record of the original issue thereof; that stub 151 represents 150

shares issued to W. B. Traynor, August 2, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was transferred; that stub 152 calls for 150 shares, issued to C. A. Peacock, August 2, 1917, and read into the record, the original certificate number, the number of shares and the amount from which it was transferred; that stub 153 calls for 150 shares, issued to J. J. McGuire, August 2, 1919, and read into the record, the original certificate number, the number of shares and the amount from which it was transferred; certificate 154 calls for 150 shares, issued to T. H. Ingwersen, August 2, 1917, and read into
140 the record the original certificate number, the number of shares, and the amount from which it was transferred; certificate 155 calls for 125 shares to F. J. King, August 2, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was transferred; certificate 156 calls for 125 shares issued to H. C. Carr, August 2, 1917, read into the record the original certificate number, the number of shares and the amount from which it was transferred; certificate stub 157 represents 58 shares issued to E. B. Kixmiller August 2, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was transferred; certificate 158 represents 5 shares issued to O. C. E. Mathies August 2, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was transfered; certificate 159 represent 5 shares issued to F. H. Luchsinger August 2, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was transferred; certificate 160 represents 5 shares issued to W.C. Vereen August 2, 1917, and read into the record, the original certificate number, the number of shares and the amount from which it was transferred; certificate 161 represents 5 shares to C. H. Wallow, August 2, 1917, read into the record the original certificate number, the number of shares and the amount from which it was transferred.

141 Certificate 162 represents 20 shares issued to E. B. Kixmiller, November 16, 1917, read into the record the original certificate number, the number of shares and the amount from which it was transferred; certificate 163 represents 5 shares issued to E. B. Kixmiller, November 16, 1917, and read into the record the original certificate number, the number of shares and the amount from which it was trans-

ferred; certificate 164 represents 3 shares of stock issued to E. B. Kixmiller in lieu of those transfers from original certificates No. 26 for 3 shares, dated November 26, 1917; that stub 165 calls for 10 shares issued to E. B. Kixmiller, March 26, 1918; that certificates of stock were not attached to stubs 161 to 165 inclusive. (Stock Book was thereupon marked "Commission's Exhibit A for identification."

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified the minute book of the Andalusia Packing Company containing among other things articles of incorporation, which was marked: "Exhibit B for identification." Counsel for Commission then read into the record page 29, Commission's Exhibit B for identification, as follows:

First: The name of the corporation shall be Andalusia Packing Company.

Second: The objects for which the corporation is formed are as follows, viz.: to build, operate and maintain a packing house or packing plant and cold storage building, and to
142 engage in, carry on and operate a general packing house and sold storage business; to buy, sell and slaughter hogs, cattle, sheep, goats, poultry, and fowls of every class of description, and to sell the manufactured products thereof; to buy and sell all food products, both of an animal and vegetable nature; to buy, sell and handle generally all by-products resulting from the slaughtering, manufacturing and converting the animals, fowls and poultry into food products; to preserve in cold storage all kinds of food products of every class and description, and to buy, sell, store and deal generally in same; to erect, own and operate warehouses for the storage of its own products and the products, goods, and effects of other firms, corporations and individuals; to construct, maintain and operate an ice manufacturing plant, and to buy, sell and deal generally in the ice business; to construct, maintain and operate a canning plant, and to can food products of every class and description, both of an animal and vegetable nature; to manufacture and sell fertilizer or any chemical ingredient thereof; to construct, maintain and operate an electric light and water plant, and deal generally in the business of furnishing electricity, electric light and water for either private or public consumption or both; to have and exercise all the rights, powers and privileges conferred upon corporations by Article 5, chapter 69 of the Civil Code of Alabama of the year 1907; to engage in and carry on all of the business or businesses, accomplish any

or all of the objects herein set forth, with the right to
143 own, construct and operate all necessary plants, cars, railways, dams, mill-races and machinery of every class and description, and to do all such things and acts, and to have and to exercise all such rights and powers in connection therewith as are or may be authorized or permitted by the laws of the Sate of Alabama or any other state or territory of the United States of foreign country in which this corporation shall do business.

"Third: The location and the principal office of the said corporation in the State of Alabama is and shall be in the town of Andalusia, in the County of Covington, in the State of Alabama.

"Fourth: The amount of the total authorized capital stock of said corporation is two hundred and fifty thousand dollars ($250,000), and the same is divided into five thousand (5,000) shares of fifty dollars ($50.00) each; the amount of capital with which said corporation shall begin business is one hundred and twenty two thousand seven hundred dollars ($122,700). There is only one class of the stock of said corporation."

Counsel for Commission then offered in evidence copy of by-laws of the Andalusia Packing Company appearing at pages, 97, 99, 101, 103, 105, 107, 109 and 111 of the minute book, the even numbered pages being blank and not written on, which was received in evidence and marked: "Commission's Exhibit 40."

Counsel for Commission thereupon offered in evidence the minutes of the special meeting of the Board of Directors
144 of the Andalusia Packing Company, held on the 24th day of July, 1917, at 4 o'clock in the afternoon, on pages 135, 136 and 137 of the minute book of the Andalusia Packing Company, which were received in evidence and marked: "Commission's Exhibit 41."

Counsel for Commission then offered in evidence copy of the minutes of the special meeting of the stockholders of the Andalusia Packing Company, held at Chicago, Illinois, on the 24th day of July, 1917, appearing at pages 138, 139, 140, 141 and 142 of the minute book of the Andalusia Packing Company, which was received in evidence and marked: "Commission's Exhibit 42."

Counsel for Commission then offered in evidence minutes of a special meteing of the Board of Directors of the Andalusia Packing Company, held on August 7, 1917, appearing

on page 145 of the minute book of the Andalusia Packing Company, which were received in evidence and marked: "Commission's Exhibit 43."

Counsel for Commission then offered in evidence minutes of the meeting of the Board of Directors of the Andalusia Packing Company, held at the Union Stock Yards, Chicago, on August 14, 1917, appearing on page 143 of the minute book of the Andalusia Packing Company, which were received in evidence and marked: "Comission's Exhibit 44."

Mr. Smithwick then testified that C. B. Colt was an employe of the Andalusia Packing Company in 1917, and that
145 he had been, prior to that time, an employe of Swift & Company.

Counsel for the Commission then offered in evidence minutes of the regular annual meeting of the stockholders of the Andalusia Packing Company, held in Chicago on Monday, October 8, 1917, appearing on page 147 of the minute book, which were received in as evidence and marked: "Commission's Exhibit 45."

The minutes of the regular annual meeting of the Board of Directors of the Andalusia Packing Company, held October 8, 1917, were not offered in evidence as there was not a quorum present. The meeting was adjourned to October 29, 1917.

Counsel for the Commission offered in evidence the minutes of the adjourned meeting of the Board of Directors of the Andalusia Packing Company, held on October 29, 1917, appearing on page 150 of the minute book of the Andalusia Packing Company, which were received in evidence and marked: "Commission's Exhibit 46."

Counsel for the Commission offered in evidence the minutes of the Directors' meeting of the Andalusia Packing Company, held March 26, 1918, appearing on page 151 of the minute book of the Andalusia Packing Company, which were received in evidence and marked: "Commission's Exhibit 47."

Counsel for the Commission offered in evidence the minutes of the special meeting of the Board of Directors of the Andalusia Packing Company held March 30, 1918, appearing on
two pages bearing no page number, but immediately fol-
146 lowing the page on which the minutes of the Directors' meeting of March 26, 1918, are typed, which were received in as evidence and marked: "Commission's Exhibit 48."

Counsel for the Commission offered in evidence the minutes of the special meeting of the Board of Directors of the

Andalusia Packing Company, held on June 29, 1918, appearing in the minute book of the Andalusia Packing Company on an unnumbered page, immediately following the minutes of the special meeting of the Board of Directors held on March 30, 1918, which were received in evidence and marked: "Commission's Exhibit 49."

Mr. Smithwick then testified that the minute book of the Andalusia Packing Company, marked: "Commission's Exhibit B for identification" was furnished to Swift & Company by T. E. Henderson of the Andalusia Packing Company; that he was acquainted with Mr. C. A. Peacock, Secretary of the Andalusia Packing Company, according to the minute book and that his address is, Union Stock Yards, Chicago, Illinois, Care of: Swift & Company. He thereupon produced and identified stock certificate books of the Andalusia Packing Company, which were marked: "Commission Exhibit C and D for identification," and testified further from examination of these books that certificates 1 to 277 inclusive were all cancelled and attached to their respective stubs in the certificate book, and that certificate stub 278 calls for 100 shares issued to T. E. Henderson, July 24, 1917, and representing transfers from 15 original certificates 147 aggregating 100 shares; that certificate stub 279 represents certificate for 820 shares issued to H. C. Carr, dated July 24, 1917, and representing transfers from 44 original certificates aggregating 820 shares; that certificate stub 280 represents 820 shares, issued to T. H. Ingwersen, dated July 24, 1917 representing transfers from 93 original certificates aggregating 820 shares; that certificate stub 281 represents 100 shares, issued to G. D. Rogers, dated July 24, 1917, representing transfer from 17 original certificates aggregating 100 shares; that certificate stub 282 represents 825 shares, issued to William B. Traynor, dated July 24, 1917, covering transfer from 87 original certificates aggregating 825 shares; that no certificate of stock has been issued from stub 283, and that certificates from stubs 278 to 282 inclusive have been returned to the stubs and cancelled by a cancelling machine on October 7, 1920.

Counsel for the Commission then asked that the minute book of the Moultrie Packing Company from which certain exhibits had been taken be marked: "Commission's Exhibit for identification." This was done.

Mr. Smithwick then testified that the minute book of the Moultrie Packing Company marked: "Commission's Exhibit

E for identification" had been obtained by him from Swift & Company's records.

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified a contract between T. E. Henderson, A. C.
148 Darling of the city of Andalusia, State of Alabama and G. F. Swift, Jr., Chicago, Illinois, to which was attached a memorandum of the obligations of the Andalusia Packing Company, May 1, 1917, which was received in as evidence and marked "Commission's Exhibit 50 and 50A." respectively.

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified a paper which he testified was a guarantee from T. E. Henderson, not executed to anyone but agreeing to sell all shares of the capital stock of the Andalusia Packing Company at $70.00 per share; that this paper was taken from the files of Swift & Company February 8, 1921, as also had been Commission's Exhibit 50. (Copy of the paper was received in evidence and marked: "Commission's Exhibit 51."

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified a paper signed by T. E. Henderson and A. C. Darling in the presence of William B. Traynor, which he obtained from the law department of Swift & Company February 8, 1921 after the service of Commission's subpoena, to which was attached a statement, marked: "Exhibit A" of the assets and liabilities of the Andalusia Packing Company May 1, 1917 (This paper and exhibit was received in evidence and marked: "Commission's Exhibit 52".)

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified financial statement of the Moultrie Packing Company, dated April 30, 1917, and testified that it was
149 taken from the files of Swift & Company. (Statement was received in evidence and marked: "Commission's Exhibit 53")

Mr. Smithwick, pursuant to subpoena, thereupon produced a paper entitled, cattle production report summary April, 1917, and a paper entitled, hog production report April, 1917, which he testified were obtained from the files of Swift & Company, which were received in evidence and marked: "Commission's Exhibit 54", and "Commission's Exhibit 55".

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified a report of W. A. Burnett, dated June 1, 1917, signed W. A. Burnett, which he testified was taken from the files of Swift & Company. (A copy of this statement was

received in evidence and marked: "Commission's Exhibit 56".)

Mr. Smithwick, pursuant to subpoena, thereupon produced and identified report of O. C. Mathies to H. J. Nelson, dated June 1, 1917, testifying that H. J. Nelson was a clerk in the employ of Swift & Company on that date; that the report was in the handwriting of Mr. Mathies and bore his signature, and that it was obtained from the files of Swift & Company. (A copy of this report was received in as evidence and marked: "Commission's Exhibit 57").

151 Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

Atlanta, Georgia, March 2nd, 1921.
11:00 o'clock A. M.

Before:
C. T. Sadler, Examiner.

(By agreement, continued from February 23rd, 1921, 11:00 A. M., to the above date.)

Appearances:

A. N. Taylor, Esq., and E. F. Haycraft, Esq., c/o Federal Trade Commission, Washington, D. C., appearing for Commission.

A. H. and Henry Veeder, Esqs., James M. Sheehan, Esq., and Frank L. Horton, Esqs., (Mr. Horton alone being present), 76 West Monroe street, Chicago, Illinois, counsel for Respondent.

155 PROCEEDINGS.

Exam. Sadler: The hearing will come to order.

Mr. Taylor: Let the record show adjournment had from February 23rd, 1921, 11:00 o'clock A. M., to March 2nd, 1921, 11:00 A. M., by consent.

M. M. STANALAND, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Taylor): Mr. Stanaland, what is your business?

A. I am principally in the jobbing business now, in the wholesale meat business, provisions, meats.

Q. How long have you been in that business?

A. About five years; from five to six years.

Q. Continuously during the five or six years last past?

A. Yes.

Q. Do you remember the date when you went into that business first?

A. What is that?

Q. Do you remember the date when you went into that business first?

A. November, 1915.

Q. Have you, during this period, had any business 156 dealings with the Moultrie Packing Company?

A. Yes.

Q. Will you please state when it was you had your first dealings with that company?

A. It was from 1915 to 1917, during 1915 to 1917 I represented them as a broker in Atlanta; I had the exclusive sale of their products here in Atlanta, in this territory at least.

Q. And do you recall the time of the year in 1915 that you commenced to represent the Moultrie Packing Company?

A. I have got some records, if you don't object, I would like to refresh my memory, I cannot remember all those dates, but I can refer to those. I can tell you more about it by consulting my records. (Witness consulting records.)

Q. Mr. Stanaland, the subpoena served upon you called upon you to produce all books of account or other records showing the accounts and kind of meat products sold by you for the account of the Moultrie Packing Company during the years 1916 and 1917; including therein the names and addresses of all customers to whom the products were sold. Is it that record which you now have?

A. Yes.

Q. The subpoena also requires you to produce all cor-

respondence between you and the Moultrie Packing Com-
157 pany from June 1st, 1917, to January 1st, 1918. Have you that correspondence or part of it?

A. Yes, I have part of it, all that has bearing on anything that—well, I have got practically all of it, to tell you the truth.

Q. Now, referring to the records which you have produced, can you state when you commenced representing the Moultrie Packing Company as a broker in Atlanta?

A. On November 1st, 1915.

Q. And will you state generally what the arrangement was which you had with the Moultrie Packing Company, under which you were to represent them as broker here?

A. Well, my arrangement with them was, that I was to be their selling agent here in Atlanta, and I as to sell direct to the retail merchants, and I was to receive as compensation, certain brokerage for my work of selling, delivering, and collecting for the products sold.

Q. Now, at this time, what was the character of the pork, if you know, that was being sold and consumed in this market?

A. Why, you mean that was sold previous to the time that I started, or what I had sold?

158 Q. Previous and up to the time when you started to sell.

A. Why, it was, as far as I know, practically all Western pork.

Q. And what was the pork that you were to sell, and subsequently did sell, for the Moultrie Packing Company—what was the character of that?

A. It was Southern pork principally, in fact practically all of it, all of it you might say at that time was soft pork. It was sold from peanuts, usually peanut fed hogs, which made the pork products very soft and oily.

Q. Now will you state just what the difference is between the Western pork and the pork which you characterize as soft or peanut fed pork?

A. Well, the Western pork is usually fed on corn, and it is hard and firm, practically all of it is hard firm pork that stands up, as a rule, better than the soft pork.

Q. Just what do you mean by "stands up"?

A. I mean that the process of deterioration does not take place as rapidly on the firm pork as it does on the soft pork, unless the soft pork is frozen. If the soft pork is frozen, why it of course stands up just like the other, at the same

time, when the soft pork comes out, why it takes the reverse back to soft pork again, just as it was before, takes prac-
159 tically the same stage that it was in, when it was put in the freezer, put under a low temperature.

Q. You mean after it is permitted to thaw out?

A. After it is permitted to thaw out, yes.

Q. Now, what would you say with regard to the flavor of the soft pork, as compared with the corn-fed pork?

A. You mean my experience?

Q. Yes, your experience and the conditions that you found in the market generally in the course of selling it, with regard to whether the public liked the flavor or not.

A. Well, there is a diversified opinion as to the flavor of it, personally I prefer it, on account of the fact that I have in fact eaten Southern pork practically all my life. That is all the pork that I have practically eaten up to the time, even coming to Atlanta; I always thought that the pork products from that were sweeter meat, that is in regard to the hams and loins, it was better in that respect.

Q. Are you referring now to the cured meat or fresh meat, or both?

A. I am referring to the fresh meat principally, and the same thing applies to the cured meat, except that the main objection to the cured meat is on account of the shrinkage, there is a good deal of shrinkage in the cured meat, and
160 as to the people, I never had a great deal of trouble in selling the oily pork at a less price than the Western pork brought, but I was never able to get as high as Western prices for Southern pork, except during certain seasons of the year, and in those seasons I was—and that season was usually about from April 1st to until, well I will say from the first through the summer months.

Q. And that was the season when you received practically the same prices for the Southern pork?

A. I received practically the same price I got at that time, received practically the same price for it as I did Western pork.

Q. And how were the differentials running during the other seasons of the year?

A. You mean how did they run?

Q. Yes.

A. They ran from about two to four cents a pound under Western prices.

Q. Did that depend upon the part of the hog, whether it was fresh meat or whether it was cured meat?

A. Well, that applied to both.

161 Q. What did control with regard as to whether it should be two cents under or greater?

A. What did control?

Q. Yes. Was it the condition of the market, or character of the meat?

A. Character of the meats; the butchers would not buy it, they would buy the Western pork in preference to the Southern pork, unless the price was cheaper.

Q. At certain times of the year?

A. At certain times of the year that was from about April 1st, why the farmers didn't have any peanuts, consequently we got pretty firm pork. It would come in in better condition, on account of its firmness, and another thing the people in Atlanta, the butchers in Atlanta, don't like frozen pork. If they can get fresh pork, they much prefer the fresh pork to the frozen pork.

Q. Was the Western pork frozen pork, they got?

A. Usually in the summer months, they have to bring it in frozen, to keep, the distance of hauling it is usually greater than it is from South Georgia, consequently they could not get it in here fresh like I could.

Q. Now, when you commenced selling this soft local

162 pork, you say that the Western pork was used almost entirely in this market?

A. Yes, sir; as far as I knew it was.

Q. Will you please state how you made these sales, whether yourself or through salesmen?

A. I sold a great deal of it myself, in fact in the beginning I was practically the only salesman that I had.

Q. You went out and canvassed the market personally?

A. Yes, sir.

Q. And talked with the customers?

A. Yes.

Q. And talked with the butchers?

A. Yes.

Q. And various people handling the pork?

A. Yes; I did that until my business grew so large until I could not handle it all myself, and after that time, why I got someone else to help me.

Q. To what class of people did you sell?

A. I sold to the butchers, principally.

Q. Now, in the course of your selling this product, did you occasionally come in contact with salesmen of other houses?

A. Yes, sir.

163 Q. Did you ever meet the salesmen of Swift & Company?

A. Yes, I met salesmen from Swift & Company.

Q. And what were they selling?

A. They were selling a Western pork, as far as I knew.

Q. And the salesmen of Swift & Company, were they trying to sell pork to the same people you were trying to sell pork to?

A. They were trying to sell pork to the same people, and did sell pork. Now all of the brokers knocked me strong when I first came into it.

Q. What do you mean by "knocked" you?

A. They called it slop-fed stuff, and they got to where, when I first came in here, why they didn't pay any attention to me, they didn't consider that I was in competition at all. They figured, well, it don't amount to anything, and it will just be a question of time until he will be out of the running.

Mr. Horton: I object to that and move to strike that out, it is only Mr. Stanaland's conclusion.

Mr. Taylor: I consent; of course, as to what he considered.

Exam. Sadler: The motion will be allowed.

Q. (By Mr. Taylor) But you occasionally did sell this soft pork at the start?

A. Oh yes, I sold soft pork right from the jump.

164 Q. Now, can you state approximately how much you sold, by referring to your books?

A. You mean from what? I don't know just what you mean there, you mean for say a year? You asked me for my records from 1916, '17, and '18, didn't you, up to the first of 1918?

Q. Yes, I think it was. Now have you the records here that will show what you did during 1915?

A. 1915?

Q. That is a portion of 1915.

A. I don't know whether I can show you; I can tell you about (witness examining his books) from June, 1916, to May, 1917, I sold $238,000.00 worth of meants, and meat products, for the Moultrie Packing Company.

Q. What kind of meats were they?

A. All pork—practically all pork products. There might

have been some beef products in that, but they were negligible, there was not enough to amount to any great thing, because the quality of beef they got down there was not very good at that time, and I did not have very much beef trade.

Q. Now, have you figures as to your sales from May, 1917, on?

Q. As long as you sold the products.

165 A. Moultrie Packing Company products?

Q. Yes.

A. Well, I have not got those figures exactly available, but I can tell approximately what they were, on account of my commissions that I received from them. They were very small.

Q. Now, have you your commissions there for the entire period that you represented the Moultrie Packing Company?

A. Yes, sir.

Q. How do they compare by months?

A. Yes, sir; by the month.

Q. Will you please state how they run, beginning at the beginning?

A. You mean by the month?

Q. By the month.

A. Well, my commissions for the month of November, which was the first month that I started, was . . .

Q. That is 1915?

A. . . . was $210.78. My commissions for December, 1915, was $296.77. My commissions for January, 1916, were, $624.10. For February, 1916, was $644.62. For March, 1916, was $633.37. For April, 1916, was $1,059.80. For May, 1916, was $538.90. For June, 1916, was $205.52. For July, 1916, was $169.23. For August, 1916, was $251.67. For September, 1916, was $197.74. Those last months were the dull months, they were practically always dull months in the pork business. Now, do you want this right on up though?

166

Q. Yes, please proceed to the end.

A. For October, 1916, was $476.19. For November, 1916, was $928.41. For December, 1916, was $800.33. For January, 1917, was $864.54. For February, 1917, was $944.38. For March, 1917, was $1,183.26. For April, 1917, was $1,198.12, and for May, 1917, was $849.24.

Mr. Horton: I object to the introduction of any more of this sort of evidence into the record, it is not tending to prove anything within the issues of this case. I cannot imagine

what the Federal Trade Commission would be interested in what Mr. Stanaland's commissions were.

Mr. Taylor: Mr. Examiner, I think it is very important to show the volume of business that was handled by this gentleman, and it has a very direct bearing upon that, and this shows in a very concrete way what he was doing.

Exam. Sadler: The objection will be noted.

Mr. Horton: I wish to further add that if counsel's proposition is well taken, the amount of commissions received
167 by Mr. Stanaland has nothing to do with it. It does not prove or tend to prove what the volume of business was.

A. (Witness continuing) I can state to you that my commissions at that time were a half-cent a pound on fresh meats, and 2½ per cent on cured meats. You might be able to arrive at approximately the amount of business I did.

Q. (By Mr. Taylor) Were the commissions uniform throughout the entire period that you have testified to?

Mr. Horton: I object to that as a leading question.

Q. And the subsequent period?

Exam. Sadler: The objection will be noted.

The witness: Shall I answer that question?

Exam. Sadler: Yes.

A. Yes, they were uniform all the way through there.

Mr. Taylor: Now will you proceed, Mr. Stanaland?

A. (Witness continuing) For June, 1917, was $484.94. For July, 1917, was $275.61. That was the time that Swift —I think it was the time that Swift took the plant over.

Mr. Horton: I object to that, and move to strike it out.

Exam. Sadler: The motion to strike will be allowed in regard to what he thinks, as to the time when Swift took over the plant.

168 Q. (By Mr. Taylor) Now what was the next month?

A. You want the next month?

Exam. Sadler: August.

A. (Witness continuing) Well, from August 1st—wait a minute now. I will have to get two months. They paid from the first to the 15th, and from the 15th to the 1st at that time, I will have to add these together, here. In August was $258.81. For September—at that time they changed my commissions, giving it to me from the 1st to the 15th, instead of by the month—for September, 1917, was $552.85. For October, 1917, was $434.91. That was all that I got from them. That was the final closing up of it—in fact, that was

all the commissions that I ever got from the Moultrie Packing Company.

Q. And did you ever sell any meats for the Moultrie Packing Company after October, 1917?

A. I don't remember. I did not receive any from them after October, 1917, I might have sold for them after that time.

Q. Some that you had previously received?

A. Some that I already had in stock. My last record seems to be—my last account is November 9th, 1917.

Q. And what was that?

A. That was a sale, that was smoked picnics.

169 Q. And do you know when you received those smoked picnics, which you sold on November 9th, 1917? I will ask you another question, which perhaps you can answer more easily, and will cover the entire situation.

A. Yes.

Q. Can you state when the last consignment of pork was received from the Moultrie Packing Company by you?

A. You said pork, didn't you?

Q. I will change that to anything.

A. I would say from either the 27th or 28th of October.

Q. And what was that a consignment of?

A. That was a consignment of pure lard.

Q. And why are you uncertain as to whether it was the 27th or 28th?

A. Well I am going by my records from the Moultrie Packing Company, which was dated on October 26th, 1917.

Q. And where was that paper, which is dated October 26th, made out, October 26th?

A. By whom was it made out?

Q. Yes.

A. Well, it is on the Moultrie Packing Company invoice, consigned invoice.

170 Q. Was that invoice made up by the Moultrie Packing Company?

A. Well, it has Swift & Company, I think, Atlanta, Swift & Company.

Q. And is dated?

A. October 26th, 1917.

Q. Do you know what the term "Swift & Company" on it means, what it refers to?

A. I do not. I don't know whether that means it was from Swift & Company down there, or whether it was to go to

Swift & Company in Atlanta. They put in some meats for Swift & Company before they withdrew the account, for me, for the Swift & Company branch here in Atlanta.

Q. What do you mean by "put in some meat?"

A. I mean they put in some stuff for Swift & Company, some beef for Swift & Company, and instructed me to notify Swift & Company, that is their branch house here, to send over and get it.

Q. You mean they put it in your car?

A. They put it in my car, yes.

Q. Did you ever get any of your consignments in a Swift car?

A. Oh yes, I have gotten some of my consignments in a Swift car.

171 Q. Now, does that notation there indicate to your mind that you either got that lard in a Swift car, or that there was a consignment to Swift in your lard car?

A. I don't remember; I don't know whether they at time put stuff—in other words, they would ship me a car, and in that car they would say, we are putting in certain products, some of it I think was beef, for Swift & Company's branch in Atlanta, and please notify them when the car arrives, so that they can get this product.

Q. And you don't remember whether it was the case in this instance?

A. In this particular instance, I do not. It has been so far back.

Q. My question was, does that notation on there indicate to your mind that either one or the other existed, either your lard was in Swift & Company's car, or that there was a consignment for Swift & Company in the car to you containing the lard? Does the quantity of lard throw any light on it to your mind?

A. I don't know that, sir. I have got a letter here from the Moultrie Packing Company stating that Swift & Company had purchased the Moultrie Packing Company,

172 previous to the date of this invoice. I cannot remember

. . .

Mr. Horton: I move to strike that out as not responsive to any question.

Exam. Sadler: The objection will be allowed.

Mr. Taylor: Now, I will ask the witness to read into the record just what the last invoice received by him does say.

That is, copy it into the record, so that the record will show, copy exactly what it is.

Mr. Horton: Why don't you put in the original?

(Witness detaching a paper from the files.)

Q. (By Mr. Taylor) Now Mr. Stanaland, what is this paper which I now show you?

A. It is a consignment invoice from the Moultrie Packing Company at Moultrie, Georgia.

Q. And did you receive any consignment invoices subsequent to this one, which I now show you?

A. You mean since that?

Q. Later than that?

A. No, I did not receive any more since that.

Q. Then, this is the last consignment invoice that you received from the Moultrie Packing Company?

A. This is the last consignment invoice I received from them.

173 Q. Of any goods whatever?

A. Yes.

Mr. Taylor: I offer in evidence the paper referred to.

(Referring to the Commission's Exhibit 58.)

Mr. Horton: May I cross examine on this exhibit?

Mr. Taylor: No objection.

Q. (By Mr. Horton) Mr. Stanaland, the quantity of lard specified in the invoice is two tierces of pure plan lard. What is plan lard, what does that refer to?

A. I don't know.

Q. Do you know whether or not that referred to a brand of the Moultrie Packing Company?

A. I think "Plantation" Brand. I had forgotten that. It refers to the "Plantation" Brand. I could not think of what that referred to there at the time, that was the name of their lard.

Q. It says two tierces in one place, and 20 pounds in another.

A. Fifty 20-pound buckets.

Q. Fifty 20-pounds buckets?

A. Yes, 50 20-pound buckets.

Q. Would you call that a small consignment or a large consignment?

174 A. Very small consignment, in fact that is really not a carload.

Q. Well, do you get a better freight rate when you ship a carload?

A. Oh yes.

Q. And it is desirable to send in carload lots if possible?

A. Always, minimum car or above, if possible, not less than a minimum car.

Q. You think the purpose of putting Swift's on here is that this lard came in to you, in one of Swift's cars, or Swift had some lard for them in your car, in this car?

A. I don't remember.

Q. But it would be either one or the other, would it?

A. I don't remember ever getting any lard, that is out of one of the cars shipped to Swift & Company's branch house in Atlanta. I don't remember getting any lard that way.

Q. Did you get any other products?

A. No, sir, no other products that way, not after Swift & Company took it over.

Mr. Horton: Well, I wish to object to the exhibit, on the ground, first, because it is the last invoice, does not make it admissible; second, because the words "Swift & Company" on there has nothing to do with anything other than pos-
175 sibly the month of shipment, and therefore it is immaterial to the issues, and does not prove anything.

Exam. Sadler: The objection will be noted, and the invoice will be received as evidence, and marked "Commission's Exhibit No. 58."

(The document referred to was thereupon received as evidence, and marked Commission's Exhibit No. 58.)

Q. (By Mr. Taylor) Mr. Stanaland, did you find that there was a good demand for this local pork referred to, as soft pork?

A. Yes.

Q. And will you state what your experience was with regard to selling it, with regard to whether or not you could get as much as you could sell, and whether or not there was a greater supply than you could sell.

A. I was never able to get as much as I could sell through the summer months.

Q. State fully what your experience was with regard to selling it how you found the market and the demand.

A. Well, it was a very good proposition for me, with the Moultrie Packing Company; I had created quite a demand for the pork against very strong opposition after I had developed the sale of the pork in Atlanta, and I made quite a nice business out of it.

176 Q. Well, did you find that when you sold it to a customer, that that customer usually bought again?

A. Oh yes, I had regular customers. I had among the biggest trade in Atlanta on it, but I always had to sell it for less than the Western pork prices, except at certain seasons of the year.

Q. Do you know whether the trade that you sold to were also handling Western pork?

A. They had handled Western pork previous to the time that I sold this Moultrie pork.

Q. Did they continue to handle Western pork while they were getting your Moultrie pork?

A. As long as I could get it, they continued to handle it.

Q. Can you state generally or at all approximately, what proportions they handled of Moultrie pork, and of the Western pork?

A. I had customers that handled very little Western pork, when they could get the Moultrie pork—pork made by the Moultrie Packing Company. I also had some customers that would not handle the Moultrie pork at all, they didn't want to handle soft pork, prices didn't make any difference with them one way or the other.

177 Q. Now, where were these customers of yours?

A. My biggest customers were in the uptown markets.

Q. Were they all in the city of Atlanta?

A. Yes, practically all of them were in the city of Atlanta. I shipped very little stuff out of Atlanta.

Q. Can you state about how many customers you had?

A. I can state approximately; I could not tell you exactly.

Q. Can you, by looking over your books, state who the principal customers were in Atlanta to whom you sold?

A. Yes. (Witness examining books) S. Ableman—do you want me to call over these?

Q. Yes.

A. S. Ableman, 197 Decatur street; he did not buy any fresh pork, he bought principally lard. You merely want the prinipal or the bigger customers, do you?

Q. Yes.

A. Well, the A. B. & A. Railroad there.

Q. About when did they stop buying?

A. The A. B. & A. Railroad? Well, the last bill I sold the A. B. & A. Railroad was on April 16th, 1917, that business was gotten by bids from the A. B. & A. Railroad, they would

send out and ask for bids on certain products, on a cer-
178 tain date, and they were competitive bids. We filed our bids on a certain day.

Q. Can you state from your books there what you sold them?

A. You mean the kind of products we sold?

Q. Yes.

A. Yes; unforunately I left that other book down there. I have got it from May, the 21st. I can tell you most any other kind of products, from May 21st, but I haven't got that.

Q. Did you sell them various products?

A. Wait a minute. I can give you some products. No, I cannot give you products, previous to that time, because I haven't got the books on it. I can get the book down there, I thought I had it with me. Well, I can tell you in a general way, what it was.

Q. Can you state in a general way what kind of products that you sold to the A. B. & A. Railroad, from your recollection?

A. Dry salt meat and lard, that is the principal products that I sold them. No, dry salt meat, lard, and smoked meat.

Q. Now, will you please state the names of some of your other principal customers?

A. Beuler Brothers, 114 Whitehall, was another principal customer.

179 Q. When did they buy last?

A. October 27th, 1917.

Q. What year?

A. October 27th, 1917.

Q. And did the sales keep up, up to that time?

A. What do you mean?

Q. I mean how did they run, about as they had previously, or had fallen off?

A. About as previously. The last bill they paid me was on November 2nd, was $300.65.

Q. How had their bills been running before that?

A. About the same, they varied more or less, right around two or $300.00 a week.

Q. Two or three hundred dollars a week?

A. Something like that, sometimes run small, and sometimes larger than that. Run smaller than that in the summer, because I could not get the products.

Q. What was the character of meat that you sold them?

A. What was that?

Q. What was the character of meat that you sold to them?
A. You mean whether fresh or cured meats?
Q. Yes; lard or what?
180 A. Well, it was practically all of the products. The last invoice here was fresh meat. The next invoice was pure lard.
Q. I think that is sufficient in regard to that. Now, will you state some of your other principal customers?
A. Well, J. H. Bullock was another, at 9 West Mitchell street.
Q. And what character of goods did you sell to him?
A. Fresh meats, cured meats and lard, practically the whole line.
Q. And when was the last sale?
A. On October 26th, 1917.
Q. About how did these sales run up to that time?
A. Well they run, the last week that they paid me, ran $193.18. They ran around—depended on the season, as to what they bought. In the winter months, their bills maybe ran from $150.00 to $200.00 every week.
Q. They had been buying every week, had they, just previous to this?
A. Yes.
Q. Up to that time?
A. Yes, they were regular customers of mine. Do you want any more of them?
Q. Yes.
181 A. Well, Campbell Brothers, 77 Decatur street, was another customer of mine.
Q. What did you sell them?
A. Well, practically the whole line, but principally fresh meat.
Q. When was your last sale there?
A. The last item I sold Campbell Brothers was on November 6th, 1917.
Q. And can you state there from your records, how the account had been running up to that time, had there been any appreciable falling off, or had it kept up?
A. No, there was practically no difference, they ran about the same all the time along there, he was a regular customer of mine.
Q. About how much a week would they run?
A. Well, it is a little hard to arrive at just how much a week it would run. They had, and still have, two places here

in Atlanta, and previous to that time, both places had been paying me cash, but towards the last, I ran an open account. They did not ask for credit, they were all right, but I ran an open account with the store at 77 Decatur street, and the other stuff at 150 Marietta street, went out for C. O. D., cash,
182 and I ran my cash items separate from my charge items, it is right hard to arrive at just what each one of them bought, I mean what the total would be for both of them.

Q. Can you state what your C. O. D. items were there?

A. Yes, they ran about $150.00 a week.

Q. And, can you state from your book how the other items ran?

A. Oh, I thought you meant—well, the cash items, that is right. The cash items, and the other ran about the same thing; they would run right around practically $100.00 to $150.00 a week, from each one of them.

Q. So it would aggregate from $200.00 to $300.00 a week, each one of them?

A. Yes, they were pretty good buyers.

Q. Now, can you state the name of another one of your principal buyers?

A. Yes, the Capital City Grocery Company, 149 Decatur street. They were at 149 Decatur street at that time, they moved over on Peters street, since that time.

Q. And when was their last purchase?

A. October 31st, 1917.

Q. And, how do the accounts run with the Capital City Grocery Company?

A. Well, they are about the only thing they bought
183 was lard, they ran from—it averaged from $50.00 to $100.00—wait a minute—it ran from $125, to $260.00 per month. That account ran by the month.

Q. Was there any appreciable falling off before the last purchase?

A. Well, the last purchase was on October 31st, 1917, they were always mighty good customers up to that time. In fact, I always had a god demand on the....

Q. Had not been any appreciable dimunition in the volume of your trade up to that time, or just before that?

A. Not when I could get the products.

Q. Now, have you another customer there?

A. John G. Cato, who was then at 32 Walton street, bought from me quite a good deal.

Q. And when was his last purchase?

A. November 8th, 1917, and

Q. And how did that account run?

A. From $50.00 to $300.00 per week. It ran as high as $300.00 there, in some places—there is $342.00, and sometimes it would drop off; well it dropped off during the summer months, they all dropped off during the summer months.

Q. And during the last three months, how did that run?

184 A. During the last three months?

Q. Yes, September, October, and November.

A. Well, in November, you see, I didn't have any stock along there in November. There is September—September, 1917, was $243.85 for the month. October was $278.69, and on November 8th, it was $26.00, that was the last charge.

Q. Why didn't you sell him any more in November?

A. Mr. Horton: I object to that, it call for a conclusion of the witness.

Mr. Taylor: I withdraw the question.

Q. (By Mr. Taylor.) Could you have sold Mr. Cato any more of the same class of goods in November, than the amount you did sell him?

A. Yes.

Mr. Horton: I object to that as calling for a conclusion of the witness, and move to strike out the answer.

Exam. Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr. Taylor.) Will you please state the situation with regard to the marketability of that class of pork, during the month of November?

A. What do you mean?

185 Q. What was the state of the market?

A. During November, 1917?

Q. Yes, during 1917.

A. You mean what prices prevailed at that time?

Q. No, I mean was there a market for it.

A. Was there a market for it?

Q. Yes.

A. Yes, there was a market for it.

Q. Why didn't you sell it?

Mr. Horton: I object to that, and the answer could only a conclusion of the witness.

Exam. Sadler: The objection will be noted.

A. Because I could not get it.

Q. Did you have calls for it?

A. Yes.
Q. Your customers were calling for it?
A. Yes.
Q. Wanted it. Did you try to get it?
A. Why, I don't know that I tried to get it, because they knew that I didn't have it, they knew that I didn't represent any Southern plant at that time. In fact I didn't represent any plant.

186 Q. Now Mr. Stanaland, can you state about how many regular customers you had for this class of goods?
A. Why, I should say....
Q. I am referring now, to the latter part of the year 1916, and the summer and fall of 1917.
A. I had, I should say, approximately 150 to 200 customers, and they were principally the larger buyers of fresh meat.
Q. And principally retailers?
A. Principally retailers; yes.
Q. Did you have any hotel trade?
A. Very little hotel trade.
Q. Restaurant trade?
A. Very little restaurant trade. I didn't cater to the restaurant and hotel trade, on acount of having to break cases. They bought small quantities, and it was necessary to break cases, and I didn't try to sell them on that account.
Q. Now, did you receive any notice from anybody of any change of interest or in the ownership of the Moultrie Packing Company at any time?
A. Yes.
Q. When did you receive such notice first?

187 A. You mean that there actually was a change? Or do you mean that they were contemplating a change?
Q. That there was any change at all in the interest?
A. Yes, on October 22nd, well, I received a letter—
Q. Just a minute—didn't you receive any notice, or weren't you informed, in any way of anything happening, prior to October 22nd?
A. Why yes, I received some letters from the Moultrie Packing Company in regard to some stock that I had down there; they wanted to buy the stock that I had.
Q. And when was that?
A. On May 22nd.
Q. And by "stock," you refer to corporate stock?

A. What is that?

Q. And by "stock," you refer to corporate stock of the Moultrie Packing Company?

A. Yes.

Q. Let me see the letter, please.

A. (Witness producing letter and handing same to counsel.)

Q. Is this the letter which I now show you?

A. Yes.

Q. And that letter was received by you through the mails?

A. Yes.

188 Q. When?

A. Why, I suppose the letter is dated May 22nd, 1917, and it must have been received about the 23rd, not later than the 24th.

Mr. Taylor: I offer this letter in evidence.

Mr. Horton: I object to the letter offered in evidence, on the ground it is a letter from Mr. Vareen to Mr. Stanaland, and any statements made by Mr. Vareen, would not be taken as an admission of the respondent or can in any way prejudice or bind the respondent. Further, the letter refers to a "Western packer," or to a number of Western packers, it is not shown in any way that the respondent is referred to.

Mr. Taylor: I think all that Mr. Horton says is so, but, nevertheless, it shows what was going on, and shows the first notice that Mr. Stanaland had of the fact that there was to be a change in the ownership of the stock, and for that purpose I offer the letter.

Mr. Horton: That is quite true, but there is nothing to connect the respondent with it, and it should not be received as evidence against the respondent.

Exam. Sadler: The objection will be noted, and the letter will be received as evidence, and marked Commission's

189 Exhibit No. 59.

(The letter referred to was thereupon received in evidence, and was marked Commission's Exhibit No. 59.)

Exam. Sadler: We will recess until 2:00 o'clock P. M.

(Whereupon, at 12:30 o'clock P. M., the hearing recessed until 2:00 o'clock P. M.)

After Recess

2:00 o'clock P. M.

Exam. Sadler: The hearing will come to order.

Mr. Taylor: I wish to withdraw Mr. Stanaland from the witness stand at the present ,and call Mr. Simmons, who lives out of the city, and who desires to catch a train back this afternoon.

Exam. Sadler: Any objection on the part of counsel for the respondent?

Mr. Horton: None whatever, we will be glad to accommodate counsel and Mr. Simmons.

S. L. SIMMONS, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Taylor) Where do you live, Mr. Simmons?
A. Columbus, Georgia.

190 S. L. SIMMONS called as a witness for the Commission at Atlanta, Ga., after having been duly sworn, testified in substance as follows:

(Pages 153-194)

That he was a retail grocery and meat dealer and also a manufacturer of sausage at Columbups, Georgia, a town of about 25,000 inhabitants; that he had had dealings with the Andalusia Packing Company during 1916 and 1917; having purchased such products as spare ribs, neck bones, tails, ears, trimmings of pigs, whole pigs and pork trimmings to be used principally in the manufacture of sausage, identified invoices of the Andalusia Packing Company, marked: "Commission's Exhibit 60 and 61;" that some time early in the fall of 1917 he received notice that Swift & Co. had purchased the Andalusia plant and that thereafter he should make his purchases from Swift & Co., which he did; that very few purchases had been made from Swift & Co. during 1916 and 1917, the earliest purchase having been made on May 12, 1917; that in October 1917, he had purchased what he believed to be a Georgia pork ham from Swift & Co., identified invoices from Swift & Co., marked Commission's Exhibit 62 to 65

inclusive, also identified letter from the Andalusia Packing Company, dated April 14, 1917, Commission's Exhibit 66:

191 that during 1916 and 1917 packers represented in Columbus, Georgia, were Morris & Company, Armour & Company, Swift & Company, Wilson & Company, Inc., Kingan & Company, and a local packing company known as the Columbus Packing Company; that the bulk of his meats were bought on the hoof and slaughtered by himself.

Upon cross-examination Mr. Simmons testified in substance as follows:

That his purchases from wholesale meat dealers has averaged from $600.00 to $700.00 per week. Of this amount about $150.00 a week was for pork products. That figure included pork which he bought and slaughtered himself. Omitting what he slaughtered himself his purchase of pork products averaged from $30.00 to $50.00 per week. He had not bought as much as $25.00 worth of pork stuff from Swift & Company for two years.

192 V. J. HENDRIX was called as a witness for the Commission on March 2, 1921, and after having been first duly sworn, testified in substance as follows (pp. 195-213):

That he was engaged in the butcher, retail grocery and meat business with the firm of Williams and Johnston in Atanta, Georgia, since 1912; that beginning about January, 1915, he began to purchase soft or local pork products from M. M. Stanaland and J. W. Clark Company; that this meat was slaughtered at Moultrie, Georgia, and Andalusia, Alabama; that he purchased this meat from them as long as he could get it; he could not remember the exact date, that he was unable to purchase it from those people; that the large percentage of his customers liker the soft Georgia pork or peanut-fed pork; that after Mr. Stanaland and the Clark Company discontinued handling this class of pork he was able to purchase it from Swift & Company, but that he had to pay as much for it as he paid for Western pork loins; that while he was purchasing from Mr. Stanaland and the Clark Company he was able to purchase soft pork at prices less than fresh Western pork.

Upon cross-examination Mr. Hendrix testified in substance as follows:

That he could not produce a single bill or record or data in books or invoices showing the price or kind of pork he purchased. He did not specify the kind of pork he wanted when he purchased it.

193 M. M. STANALAND. was thereupon recalled for further direct examination, and testified as follows:

Direct Examination.

Q. (By Mr. Taylor) Mr. Stanaland, what is this paper that I hand you? (Handing witness a paper.)

A. This is a letter from W. C. Vareen, president of the Moultrie Packing Company.

Q. And relating to the same stock owned by you, which was referred to?

A. What is that?

Q. And relating to the same stock owned by you which was referred to in this letter of May 22nd, which was received as Exhibit No. 59?

A. Yes.

Q. Now, do you know if that stock was afterwards actually sold?

A. Actually sold?

Q. Yes, did you receive the money from the transaction?

194 A. Yes, I suppose it was sold, I don't know; I got the money for it.

Q. You got the money for it?

A. Yes.

Mr. Taylor: I offer this letter in evidence. (Handing letter to the counsel for respondent.)

Mr. Horton: I object to the letter being received in evidence. First, upon the ground that it is evidently a letter from Mr. Vareen, as president of the bank, and not as president of the packing company; second, that it is a declaration by Mr. Vareen of a transaction between him and Mr. Stanaland, and should not be used in evidence in connection with and against this respondent.

Mr. Taylor: Mr. Examiner, I think the letter, on the face of it, answers the objection of counsel for the respondent. (Handing letter to the Examiner.)

Exam. Sadler: The letter will be received as evidence, and marked Commission's Exhibit No. 67.

(The letter referred to was thereupon received in evidence and marked Commission's Exhibit No. 67.)

Q. (By Mr. Taylor.) What is this paper which I now hand you? (Handing witness a paper.)

195 A. What about it?

Q. What is it?

A. Why, it is a letter from the Moultrie Packing Company, signed by Mr. Wallow.

Q. And the initials?

A. Well, it looks like it is C. W., as well as I recall, it has been some little time—it is C. H. Wallow.

Q. Did you know Mr. Wallow?

A. Why, Mr. Wallow, it developed afterwards, was a man who was working for Swift & Company. He had charge of the office, I suppose, of Swift & Company.

Mr. Horton: I object to that answer as not being responsive to the question.

The Witness: He asked me who Mr. Wallow was.

Exam. Sadler: The objection will be noted.

Q. (By Mr. Taylor.) Do you know what Mr. Wallow's relations with the Moultrie Packing Company were at the time this letter was written, and for some time subsequent?

A. Well, he was never with the Moultrie Packing Company, to my knowledge, until after Swift & Company bought the Moultrie Packing Company.

Mr. Horton: I object to that statement, there is noth-
196 ing in this record, so far, to show that Swift & Company did buy it.

Exam. Sadler: The objection will be noted.

Mr. Taylor: I offer the letter in evidence. (Handing letter to respondent's counsel.)

Mr. Horton: We object upon the ground that the letter, on its face, shows that it is from the Moultrie Packing Company to Mr. Stanaland, and this is referring to certain accounts, what accounts it is not clear. It is immaterial and irrelevant to the issues in this case.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 68.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 68.)

Q. (By Mr. Taylor.) What is this paper which I now hand you, Mr. Stanaland? (Handing witness a paper.)

A. That is a copy of a letter that I wrote to the Moultrie Packing Company.

Q. Wrote and mailed that to the Moultrie Packing Company about that date?

A. Yes, that is an exact copy of a letter that I wrote
197 them. I wrote the letter myself.

Mr. Taylor: I offer this copy in evidence. (Handing letter to counsel for respondent.)

Mr. Horton: We object, first, upon the ground that it is a copy; second, upon the ground that it is a mere self-serving declaration of this witness, not germane to the issue.

Mr. Taylor: Mr. Horton, will you produce the original of this letter from the files of the Moultrie company?

Mr. Horton: We haven't got it.

Mr. Taylor: You mean the Moultrie Packing Company has not got the original?

Mr. Horton: I don't know if they have, I have never been through their files.

Mr. Taylor: Do you know who is in charge of the files of the Moultrie Packing Company at the present time?

Mr. Horton: You are asking me now on the record, or off?

Mr. Taylor: On the record, yes.

Mr. Horton: The manager of the Moultrie Packing Company, at the present time, I do not know. I do not know whether that corporation or company is in existence or not.

Mr. Taylor: I asked you if you knew who was in charge of the Moultrie Packing Company.

198 Mr. Horton: Who has the old files of the Moultrie Packing Company I don't know.

Mr. Taylor: Can you tell me who does know?

Mr. Horton: It is possible that Mr. Vareen might know. It is possible that several other people might know.

Mr. Taylor: Mr. Examiner, there is an objection here to this copy of the letter on the ground that it is not the original; it is manifest that the original was sent to the Moultrie Packing Company, and if it is not destroyed, it is now in their files, and I am making these inquiries for the purpose of ascertaining who is the proper party to subpoena to produce the original.

(Addressing Mr. Horton) Are you able to state, Mr. Horton, whether these account books of account, papers, letters, and records of the Moultrie Packing Company were retained

by Mr. Vareen, or whether they were left in the office of the Moultrie Packing Company?

Mr. Horton: If you will subpoena me, Mr. Taylor, I will get on the stand and testify.

Mr. Taylor: Will you state whether or not you have the information that I have just asked regarding it?

Mr. Horton: I said before, if you will subpoena me, 199 I will testify.

Mr. Taylor: But you decline, without being subpoenaed, to state whether or not you know where these papers are?

Mr. Horton: Well, the truth of the matter is that I have not sufficient information to give you a good answer. You are referring now to that particular letter, I don't know where it is.

Mr. Taylor: No, I presume you don't know where this particular letter is. I have no doubt you don't.

Mr. Taylor: Mr. Examiner, I offer this copy in evidence, and I will state that we will proceed to subpoena the original from—we will endeavor to subpoena the original letter from the files of the Moultrie Packing Company.

Exam. Sadler: Same objection?

Mr. Horton: We again renew and repeat our objection.

Exam. Sadler: The admittance of the letter as evidence will be reserved until a later period.

Mr. Taylor: May I ask that the letter be marked for identification?

(The paper referred to was thereupon marked for identification, the letter F.) (Ex. 106.)

Q. (By Exam. Sadler): Mr. Stanaland, you stated on the record that this is an exact copy of a letter that you 200 sent to the Moultrie Packing Company?

A. To the Moultrie Packing Company, yes.

Q. (By Mr. Taylor): Now, it is a carbon copy of the original letter, is it not, Mr. Stanaland?

A. It is a carbon copy of the original letter.

Q. It has been retained in your files from the time the original letter was mailed until the present time?

A. Yes, sir.

Q. Until it was produced here pursuant to subpoena?

A. How?

Q. Until it was produced here pursuant to subpoena?

A. Yes; yes, sir; I wrote it. I wrote all my letters at that time myself.

Q. Mr. Stanaland, what is this paper which I now hand you? (Handing witness paper.)

A. That is a carbon copy of a letter that I wrote to the Moultrie Packing Company, Moultrie, Georgia, on October 13th, 1917.

Q. You wrote and mailed the original of that letter to the Moultrie Packing Company?

A. I wrote that letter to Moultrie, Georgia.

Q. On the date that this bears, October 13th, 1917?

201 A. Yes.

Q. And where has this carbon copy been kept?

A. It has been in my files.

Q. Until it was produced here pursuant to subpoena?

A. Yes.

Mr. Taylor: I offer in evidence the copy of the letter dated October 13th, 1917.

Mr. Horton: We object; first, on the ground that it is a carbon copy and proper presumption of receipt thereof by the Moultrie Packing Company is not explained; second, that it is a mere self-serving declaration of Mr. Stanaland's, and is not germane to the issues in this case.

Exam. Sadler: Do you object because it is a copy, the original not being produced?

Mr. Horton: Yes.

Exam. Sadler: The ruling on this letter will be the same as in the former case, and it will be marked Exhibit G for identification.

(The letter referred to was thereupon marked Exhibit G, for identification. Ex. 107.

Q. (By Mr. Taylor): Mr. Stanaland, what is this paper which I now hand you?

202 A. One side is a carbon copy, the other side is a circular letter.

Q. Disregarding the circular letter, please refer to the copy of the letter dated October 20th, 1917.

A. Really it is not pertaining to the record of that letter at all, just used that for a copy instead of yellow sheets. Well, that is another copy of a letter to the Moultrie Packing Company, Moultrie, Georgia.

Q. That you wrote and mailed to the Moultrie Packing Company?

A. It is a carbon copy that I wrote and mailed to the Moultrie Packing Company, Moultrie, Georgia.

Q. And where did this carbon copy come from?

A. Come out of my files.

Q. It has been kept there since October 20th, 1917, up to the time that it was produced here, pursuant to subpoena?

A. Approximately that date, it was filed along about that time, but it has been in my files.

Mr. Taylor: I offer that in evidence. (Handing paper to counsel for respondent.)

Mr. Horton: We object, first, on the ground that it is a carbon copy; second, on the ground that the necessary facts to raise the presumption of receipt thereof by the Moultrie Packing Company is not shown; third, it is a mere self-
203 serving declaration on the part of Mr. Stanaland, relating to a transaction between him and the Moultrie Packing Company, and in no way relates to this respondent, nor is it germane to the issue.

Exam. Sadler: The same ruling on this letter as on the previous two letters, and it will be marked the letter H, for identification.

(The letter referred to was thereupon marked Exhibit H, for identification.) Ex 108.

Q. (By Mr. Taylor) Now, Mr. Stanaland, do you recall the circumstances which lead you to write these two letters, marked G and H, for identification, (handing witness the papers)?

A. Why yes, I recall the circumstances all right; competition was getting pretty had on the same products.

Q. Well, please state what you mean "competition was getting pretty hard."

A. Competition, I mean this—that while I had not been advised of it officially, I had every reason in the world to.—

Mr. Horton: Now, I object to what the witness had every reason in the world to think or believe, or whatever he is going to say.

Exam. Sadler: The objection will be noted.

204 Q. (By Mr. Taylor) Please state what facts you know. You were at that time selling fresh meats, were you not, fresh pork?

A. Let me have my other letters there, and I can tell you. You have got some other letters there, you have got some more letters there in that file. (Witness examining papers.)

Q. Is this the one you are referring to? (Referring to Commission's Exhibit No. 67.)

A. Yes, why I had reasons to believe that Swift & Company—

Mr. Horton: I move to strike that out, what the witness had reason to believe.

Q. (By Mr. Taylor) I show you Exhibit No. 67.

Mr. Horton: Let us get a ruling on that. I move to strike that out.

Exam. Sadler: The objection will be noted. The motion to strike will be noted.

Q. (By Mr. Taylor) I show you Exhibit No. 67.

A. I had a letter previous to that time, advising me that the plant would be—

Mr. Horton: I object to that answer, unless it is shown who the letter was from, and what it contained, and the date of it.

Mr. Taylor: The letter is Exhibit No. 67, which the witness now has before him.

205 Exam. Sadler: The objection will be noted.

A. (Witness continuing)—that Swift & Company owned the plant, the Moultrie Packing Plant.

Mr. Horton: I move to strike out the answer, Mr. Examiner, on the ground that it is not shown who wrote the letter advising the witness that Swift & Company owned the Moultrie plant. There is no time stated.

Mr. Taylor: The letter is in evidence, Mr. Examiner, it is No. 67.

Mr. Horton: That is a conclusion of counsel, he does not know what the witness is referring to.

Exam. Sadler: Is the witness referring to No. 67 or No. 57?

The Witness: I was referring to this Exhibit No. 67.

Mr. Horton: I renew my objection, because upon examination of Exhibit 67, it does not show that Swift & Company bought the plant.

The Witness: It infers that Swift & Company bought the plant.

Mr. Horton: I object to any inferences or, if it does say so, it would not be true at that time or any other time.

Mr. Taylor: The exhibit, Mr. Examiner, stated—"Replying to your favor of the 15th instant, will say that your stock certificate has been received by Moultrie Packing Com-

206 pany, and will be forwarded with all other stock certificates in a few days to Chicago for collection. As soon as remittance is received, bank will forward you check. Whenever the time comes, I shall, of course, take pleasure in writing you the lettter which I advised you I would write. It is

probable that we will not turn over the plant to Swift & Company for possibly ten days, yet. Some of their men are already here. Our advice is that they expect to continue our present selling arrangements for an indefinite period. Will keep you posted as to developments." This letter is dated June 18th. Now, after the receipt of this letter of June 18th, and before writing the two letters here referred to, marked G, and H, for identification, did you receive the money agreed upon in payment for your stock, which had been forwarded to Mr. Vareen?

Exam. Sadler: Just a second, I would like to make a ruling on Mr. Horton's objection, that the motion to strike be denied. Go ahead and answer the question.

The Witness: What was the question, then?

Q. (By Mr. Taylor) Did you get your money for this stock before you wrote those letters?

A. Let me have those letters. (Counsel handling letters to witness.) There was a letter in there from the bank.

207 Mr. Taylor: That is not here.

The Witness: What is the date of those letters?

Mr. Taylor: October 13th, and October 20th.

A. (Witness continuing) Yes, I had gotten my money for my stock.

Q. Well now, will you proceed to state what the circumstances were that lead up to your writing those two letters?

A. The branch of Swift & Company was selling the same pork that I was selling here at the time, that is the Moultrie pork, or pork from the Moultrie Packing Company, and we were in competition with each other on the same commodity.

Q. Were you receiving that pork under instructions to sell it at any given price?

A. Yes, I had a price list.

Q. And was there any difference between the price you were instructed to sell it at, and the price that Swift & Company was selling it at?

A. Well, I don't know just whether there was or not, I could not say positively, because of course the only thing that I could say was that what I was finding in my trade. My trade, I had been handling this pork all the time, refused to buy from me, because they stated that they were getting

208 a better price from the branch house of Swift & Company.

Q. And was it that condition that caused you to write these letters of October 13th . . .

A. Yes.

Q. . . . and October 20th?
A. Yes, sir.
Q. And these . . .
Mr. Horton: I move to strike out that answer because it calls for a conclusion of the witness, and it is not germane to the issues.
Exam. Sadler: The motion to strike will be noted.
Q. (By Mr. Taylor) When did you first begin to receive instructions from the Moultrie Packing Company as to prices at which you were to sell the products?
A. I received price lists every week from them as a rule, all the time along there.
Q. All the way along?
A. Yes.
Q. And were there any instructions attending that price list?
A. Well, I was not supposed to cut the price—well, the latter part of the time, they held me very rigidly to it.
Q. Now, just when do you refer to by the "latter part
209 of the time"?
A. Well, along in say from July, August, and September, and along there in those times, they are in fact the latter part of the time in which I had their products.
Q. That is in 1917?
A. 1917.
Q. Now, this letter, Exhibit H, dated October 20th, do you know how long it would take that in ordinary course to reach Moultrie through the mails?
A. You mean to say Exhibit H?
Q. Yes.
A. On October 20th?
Q. Yes.
A. Well, that letter mailed October 20th, would leave here on the train which should reach Moultrie the next morning about seven or eight o'clock the following morning.
Q. Now, I show you here paper dated October 20th, 1917, will you state what that is? (Handing witness paper.)
A. Dated October 22nd?
Q. October 22nd, pardon me.
A. Well, that is a letter from Moultrie Packing Company, written by F. A. Luchsinger. It is only got his initials.
210 Q. That letter was received by you in due course through the mails?
A. Yes, sir.

Q. Mr. Taylor: I offer the letter in evidence. (Handing letter to counsel for respondent.)

Mr. Horton: Well, I object to the letter on the ground that it is a letter from the Moultrie Packing Company; it is a self-serving declaration of that company, and the statements in there should not be taken or used as evidence against the respondent; and also the fact that the letter was written before the assets were taken over by the respondent.

Exam. Sadler: The objection will be noted, and the letter received as evidence, and marked Commission's Exhibit No. 69.

(The letter referred to was thereupon received as evidence and was marked Commissions' Exhibit No. 69.)

Q. (By Mr. Taylor) Did you reply to that letter of October 22nd, which is received here as Exhibit No. 69?

A. Yes, I replied to it.

Q. Is this a copy of your reply, which I now hand you? (Handing witness a paper.)

A. Yes, sir.

Q. Is that a carbon copy of the original letter?

A. That is an exact carbon of it, I wrote that myself.

211 Q. And the original letter was mailed to?

A. Mailed to—well, it was mailed to the Moultrie Packing Company, Moultrie, Georgia, I don't know whether I put the name Luchsinger on the upper part of it there or not.

Q. And where has this copy been kept?

A. In my files in my office.

Q. Until it was produced here, pursuant to subpoena?

A. Until it was produced here.

Mr. Taylor: I offer the copy in evidence.

Mr. Horton: Well, we object on the ground that it is a copy; and second, that it is a hearsay statement by Mr. Stanaland, and not germane to the issues in this case; that the facts necessary to show a presumption of its receipt by the Moultrie Packing Company through the mails has not been shown.

Exam. Sadler: The same ruling will be on this letter as on Exhibits identification F, G, and H, and the letter will be marked for identification the letter I.

(The letter referred to was thereupon marked I, for identification.) (Ex. 102.)

Q. By. Mr. Taylor) What is this paper which I now show you, Mr. Stanaland? (Handing witness a paper.)

A. Well, that is a copy of a letter written to Mr.
212 Vareen, president of the Moultrie Packing Company, Moultrie, Georgia, on January 20th, 1917.

Q. And mailed to them?

A. Yes.

Q. And is this a carbon copy of the original letter?

A. Yes, that is an exact carbon copy of the original.

Q. And where has this copy been kept?

A. It has been kept in my files.

Q. Up to the time that it was produced here pursuant to subpoena?

A. Yes.

Mr. Taylor: It is offered in evidence. (Handing letter to counsel for respondent.)

Mr. Horton: We object, first, because it is a carbon copy; second, it is from Mr. Stanaland to Mr. Vareen, not connected in any way with the respondent, and third, because it is hearsay; and fourth, because it is long prior to any time in which this respondent is alleged to have had anything to do with the Moultrie Packing Company.

Exam. Sadler: The same ruling as on other letters marked for identification, and this letter will be marked for identification, the letter J.

213 (The letter referred to was thereupon marked Exhibit J, for identification.)

Q. (By Mr. Taylor) Did you receive a reply to that letter? Mr. Stanaland?

A. I don't recall whether I did or not.

Q. I show you a paper—that refresh your recollection? (Handing witness a paper.)

A. Yes, that is a reply to it here.

Q. Then, what is that?

A. That is a letter from W. C. Vareen, president of the Moultrie Packing Company, to me . . .

Mr. Taylor: I offer that in evidence.

A. (Witness continuing) . . . that is a reply to that letter.

(Mr. Taylor handing letter to counsel for respondent.)

Mr. Horton: I object, because this is long prior to the time that it is even alleged that the respondent had anything to do with the Moultrie Packing Company; second, that it is all hearsay, and has nothing to do with the issues here.

Exam. Sadler: The objection will be noted, and the letter will be received as evidence, and marked Commission's Exhibit No. 70.

(The letter referred to was thereupon received as
214 evidence and marked Commission's Exhibit No. 70.)

Exam. Sadler: We will take a recess until 10:00 o'clock A. M., March 3rd, 1921.

(Whereupon, at 5:00 o'clock P. M., the hearing was adjourned until 10.00 o'clock A. M., the following morning, March 3rd, 1921.)

215 Morning Session.

Atlanta, Georgia, March 3, 1921.

10:00 o'clock A. M.

(Met pursuant to adjournment, all parties being present.)

Exam. Sadler: The hearing will come to order.

M. M. STANALAND, being recalled to the stand for further direct examination, testified as follows:

Direct Examination.

Q. (By Mr. Taylor) Mr. Stanaland, going back to the spring and early summer of 1917, do you remember whether you had a good market for local pork?

A. Yes, I had a good market.

Q. Able to sell all that you could get of it?

A. Well, I cannot say that I was able to sell all that I could get in the early spring—yes, that was true, I was able to sell all that I could get in the early spring.

Q. Now, did you call attention of that fact to the Moultrie Packing Company?

A. At what time? In the spring?

Q. Yes.

A. I don't remember, I guess I did; I don't recall.

Q. I show you this paper, and ask you to read it, and state whether that refreshes your recollection? (Handing wit-
216 ness a paper.)

A. Yes; I remember that.

Q. Does that refresh your recollection as to whether or not you had a good market for . . .

A. Yes, I had a good market all right.

Q. (By Mr. Taylor) Mr. Stanaland, after you received this letter of October 22nd, 1917, from the Moultrie Packing Com-

pany, Exhibit 69, did you make any attempts to secure accounts of other companies? (Handing witness a paper.)

A. Yes.

Q. And did you succeed in securing accounts with other concerns later on, any other concerns?

A. Well, yes, I succeeded later on. The fact of the business, I didn't succeed until after I secured the Tifton Packing Company's account.

Q. And what class of goods did the Tifton Packing Company have?

A. The same class of goods that the Moultrie Packing Company, sold from the same part of the country.

Q. And after you received no further goods from the Moultrie Packing Company, do you know who handled the Moultrie Packing Company's products here in this market, or how they were handled, by whom they were sold?

217 A. Swift & Company was supposed to sell them, but I could not swear absolutely that Swift & Company did sell them, except on the—what my trade told me, and on the information that I got individually from the Moultrie Packing Company.

Q. Well, you visited your customers from day to day and from time to time?

A. Yes.

Q. And did any of them state to you any reasons why they could not buy your meats, whether they had previously bought from somebody else?

A. Well, I didn't have that account until February—I mean the Tifton Packing Company account—until February, 1918. I think that date is correct. February, 1918, is when I got my first products from the Tifton Packing Company.

Q. In calling upon your customers after October 22nd, 1917, did you occasionally see Swift's meats in their places?

A. Yes.

Q. And were any of those Swift meats local Georgia pork?

A. Looked to be; yes.

Q. You are able to tell Georgia pork when you see it, are you not?

A. Well, I am able to tell peanut-fed pork or mass-fed
218 pork, which is soft pork, of course I would not swear it would be Georgia pork.

Q. Now, did you see any soft pork in their places?

A. Yes.

Q. With Swift's mark on it?

A. Yes.

Q. Do you know of any of the Moultrie pork being sold in this market by anybody other than Swift?

A. No.

Q. That is after this letter of October 22nd, after you stopped selling it.

A. That is what I understood you to mean.

Q. Now, after you had obtained the Tifton account in February, 1918, did you continue to sell the soft Georgia pork in this market?

A. Yes.

Q. For how long a time?

A. Until June, 1919.

Q. And during this time, do you know of anyone else who was selling soft Georgia pork in this market?

A. Yes, there were a number of others selling soft Georgia pork in this market.

219 Q. Who were selling it?

A. The Waycross packing plant was coming into this market, the Chipley Packing Company of Chipley, Florida. I don't remember whether the Statesboro Packing Company of Statesboro, Ga., was coming in here at that time or not, it may have been previous to that time, I am not certain as to that, but they did come into this market at one time—not Statesboro Packing Company, but Bulloch Packing Company, of Statesboro, I will correct that, they came into this market at one time.

Q. And that is all in addition to the products of the Moultrie Packing Company, which was being handled here by Swift.

A. Wait a minute; there is another one. Armour brought pork here from Jacksonville, along about that time, Armour & Company brought pork here, soft pork from Jacksonville, Florida, they came into this market about that time, but they did not come in to any great extent.

Q. And Swift & Company was selling the Moultrie products?

A. Supposed to be, I had reason to believe they were, because the trade that I had, with which I came in contact, said they were.

Q. And you saw the products hanging in their places of business?

A. Yes.

220 Q. And now, will you state what sort of competition in the way of prices you met with during this period, when you were handling the Tifton products?

A. From whom?

Q. From Swift & Company?

A. Well, at times Swift & Company were very low, and at times they were pretty well in line. It depended a good deal upon market conditions here as to how they would run.

Q. Can you describe the run of prices on soft pork, with relation to the prevailing price on Western pork? How did the prices compare?

A. During which time?

Q. During the time that you were representing the Tifton Packing Company.

A. Well, it usually sold from two to three cents a pound under the Western prices. That was the usual differential on fresh meat. Of course it varied. There were certain seasons of the year when I could get as much, and in some instances more, on this market for the Southern pork, on account of the short haul, on accounts of its getting in fresh instead of being frozen.

Q. How would the short haul help you?

221 A. The short haul would help it in that it could bring it in refrigerator cars, instead of pre-chilling it or freezing it. You see in a long haul on pork it is necessary to, as a rule, to freeze it, so that it will come through in good condition. From the Moultrie Packing Company, I usually had a haul of about 24 hours.

Q. So that it was unnecessary to freeze the pork brought to this market?

A. Unnecessary to freeze the Moultrie pork, in order to get it in here in good condition.

Q. Now, when were these seasons of the year that you speak of, when you could sometimes get full Western prices for the soft pork?

A. Usually from March 15th on to October 1st. At that time there was very little peanut fields, and consequently there was nothing for the hogs to eat that would create this oily pork, but during the fall season, when the fall season began, there was usually so many peanut-fed hogs until there was quite a good deal of soft, oily pork on the market, and it was in worse condition at that time in regard to the oil than it was later on.

Q. Now, at the time you were handling the Tifton
222 pork, were you permitted to meet Swift & Company's prices?

A. Yes, I was permitted to meet Swift & Company's prices. Sometimes I would not meet Swift & Company's prices. I remember one instance after they got it that they turned it loose pretty low around town here. That period lasted I should say, for probably two weeks, and knocked the bottom out of it. I don't know whether it was because they were overloaded on that particular class of pork, or what it was. But I will never forget that, because I come very nearly dumping some stuff.

Q. What class of pork was that?

A. That was Southern pork.

Q. And when was that?

A. As well as I remember, that was in the fall of 1918.

Q. Do you recall how much they were under your prices at that time?

A. No, I cannot say that I do. I know that they were considerably under my lowest price given me by the Tifton Packing Company.

Q. Now, did you have a discretion with regard to making prices when you were representing the Moultrie Packing Company after July, 1917—that is for the months July, August, September and October up to the time that it was taken away from you?

223 A. At first I didn't have a great deal of trouble, because I didn't get a great deal of products, but they began to tighten up on me pretty closely along towards the end of it.

Q. Now, will you please state just a little more fully just what you mean by that?

A. Well, I was instructed to hold strictly to list prices.

Q. And when were those instruction given?

A. Along in September and October, 1917.

Q. In the meanwhile was Swift & Company holding to the same prices that you were instructed to hold to?

Mr. Horton: I object to that, unless the witness knows exactly what Swift & Company were doing.

The Witness: I don't know.

Exam. Sadler: The objection will be sustained.

The Witness: Will you put that question again.

Q. (By Mr. Taylor.) Do you know at what prices Swift

& Company were selling for during September and October, that is selling the Moultrie pork?

Mr. Horton: What year?

Mr. Taylor: 1917.

A. Only from what I was told by my trade.

Mr. Taylor: Yes.

224 Mr. Horton: I object to that as hearsay.

Exam. Sadler: The objection will be noted.

Q. (By Mr. Taylor.) Now, what did the trade say to you? What did your customers say to you at that time with regard to the prices that Swift & Company were quoting them?

Mr. Horton: I object to that, Mr. Examiner. It is immaterial what the customers said, what they said might not have been true; I think it is commonly known, it is a matter of general knowledge, and I think the Courts take judicial notice, that between a buyer and a seller, there are many arguments given out, which each one of them can think of, to influence the price, to make a trade.

Mr. Taylor: All of that goes to the weight of the evidence, Mr. Examiner, and not the competency of it. The competency of this evidence is perfectly clear, as will be shown in the rule in the case of Lowe vs. Lawler, and we are entitled to introduce it. At least I feel sure that it does come within that rule, or will come within that rule, before I finish this line of examination.

Exam. Sadler: The objection will be noted.

The Witness: What was the question?

Q. (The previous question read by the reporter.)

225 A. They told me what Swift's prices were at that time, and that if I would meet those prices they would give me the business.

Q. And were you able to meet those prices on Moultrie pork?

A. Not in all instances.

Q. Why?

A. Because I did not have the authority to do it.

Q. And did you accordingly lose the sales?

A. Where I did not meet the prices I did.

Q. Now, you say you kept the Tifton account up to June, 19—

A. 1919.

Q. What happened then?

A. They sold out to Armour & Company.

Q. Well, what happened with the account, so far as you were concerned?

A. Armour & Company withdrew the account.

Q. And you were left, unable to get any more Southern soft pork from Tifton?

A. No, I secured the Macon Packing Company account at that time that was still Southern pork.

Q. The same class of pork?

A. The same class of pork.

Q. Now how long did you keep the Macon Packing Company account?

226 A. Until they closed the plant; it was in 1920; I don't remember the exact date.

Q. That is, you obtained the account?

A. Obtained the products until they closed the plant, qnit operations.

Q. What time of the year 1920, as near as you can tell?

A. It was about August or September of 1920, as well as I recall.

Q. And what condition did you find in the competitive market, so far as Swift & Company was concerned, so far as the period, when you were handling the Macon Packing Company's product?

A. I didn't have very much trouble or competition with them along at that time.

Q. Now, who was selling the soft pork at that time?

A. In 1920?

Q. Yes. During the time that you were handling the Macon products.

A. Well, Swift & Company, Armour & Company, and White Provision Company, of Atlanta.

Q. What class of pork was the White Provision Company handling?

A. Why, they handled both. They handled corn-fed pork from Tennessee, and also peanut-fed pork from South Georgia.

227 Q. Well now, would the White Provision Company sell cut pork or did they sell the whole pig?

A. Yes, sold both.

Q. At that time?

A. Yes.

Q. I believe you stated in your previous answer as to who was selling the soft pork in this district, that the Way-

cross Company, at Chipley, and the Statesboro concern, were selling. What became of them in the meanwhile?

A. Why, Waycross quit and Statesboro—well they quit coming in, and the Chipley Packing Company quit coming in on account of it being such a hard—it being so hard for them to get their cars through, the railroads into Atlanta were very hard to get them shipped, a good deal of stuff in here was by express, that is fresh pork by express, but it came in very bad condition, in fact nearly all of it was hardly in a merchantable condition when it was received.

Q. Well, do you know if they are still in business?

A. The Chipley Packing Company?

Q. Yes.

A. They were still in business the last I heard from them, but they have withdrawn from the Atlanta market, some little time ago.

228 Q. Did you at any time meet in competition here the products of the Andalusia Packing Company?

A. Yes, sir.

Q. When was that?

A. That was in 1916 and '17.

Q. And can you state about what time in 1917 it ceased?

A. About the same time that I ceased getting products from the Moultrie Packing Company.

Q. Who handled the Andalusia account here during that time?

A. The J. W. Clarke Company.

Q. And who was the J. W. Clarke Company?

A. That was a stock company—that is it was a corporation, I think.

Q. And who was the active man in the corporation?

A. Mr. Miller,—I was trying to think of his initials, but I cannot recall his initials just now—F. O. Miller, I think.

Q. Now, what is the situation here as far as you are concerned, at the present time, with regard to South Georgia pork, are you able to get it to sell?

A. No, not to any extent. I am getting—well, the fact of the business is I have got a consignment of my second car this past winter season.

229 Q. All you have been able to get the entire season?

A. Why very little stuff, I have got some here from the Savannah Abbatoir & Packing Company, Savannah, Georgia, but not enough to amount to anything, about a 10,-

000 pound car, mixed car, not all fresh pork, some of it has beef in it.

Q. Are you able to sell all that you can get?

A. Yes, if I can get it at anything like a reasonable or market price I am.

Q. Can you sell more than you were able to get?

A. Yes.

Q. Do you know who is at the present time selling Georgia soft pork in this market, fresh pork, if anybody?

A. Swift & Company is selling it.

Q. How does Swift & Company's price on Georgia soft pork compare with the price on Western pork at the present time?

A. They seem to be about the same, not very much difference.

Q. Do you know of any other soft pork that is being sold in the market at the present time?

A. None except White Provision Company; they probably still sell some Georgia pork.

Q. Do you know whether they sell that as cut up or in the pig?

A. They sell it both ways; I have occasion to buy it 230 from them sometimes.

Q. Now you say that Swift & Company's prices on the soft pork, at the present time, are about the same as Western pork; can you state how long that condition has existed?

A. Well, I don't know how long it has existed. In fact, I don't know that they were selling any Southern pork, because I had very little occasion to come in competition with it, as I am selling principally Western pork at this time.

Q. Whose account do you have at the present time?

A. Sinclair Sales Company, of Cedar Rapids, Iowa.

Q. And when did you get that account, Mr. Stanaland?

A. In June, 1920.

Q. And you get no Souther pork from them, none of the soft pork?

A. Nothing, except firm corn-fed Western pork.

Q. Do you recall having among your customers the account of Williams & Johnston?

A. Yes.

Q. Can you by turning to your books state about when you stopped selling to Williams & Johnston?

A. Yes, sir; I think I can. You mean when I stopped selling them anything?

231 Q. That is when you stopped selling them Southern pork, that is soft pork?

A. Yes, I think I can. No, I cannot do that by turning to these books, I would have to turn to the....

Q. Can you state when you stopped selling the Moultrie pork?

A. Yes, I can tell you that. October 6th, 1917, was the last date, the last invoice.

Q. Did you afterwards sell them Georgia pork from your other accounts?

A. Yes, when I could get it. I didn't right immediately after that, because I didn't have any Southern pork.

Q. But, whenever you had it, and were able to sell it, you sold it to this firm?

A. Yes, I could sell it to them.

Mr. Taylor: You may cross examine him.

Cross-Examination.

Q. (By Mr. Horton.) When did you start in the wholesale meat and jobbing business in Atlanta?

A. In 1915.

Q. What was your business prior to that time?

A. Wholesale dry goods business.

Q. Is this your first experience in the meat business?

232 A. That was my first experience; yes.

Q. Then, you represented the Moultrie Packing Company up until October, 1917?

A. Yes.

Q. And did you represent any other lines, any other concerns?

A. Not any principal lines, I don't recall having represented any other lines at all, except the Moultrie Packing Company at that time, I possibly bought and sold some stuff on the outside.

Q. What concerns have you represented or been broker for since that time up to date?

A. What concerns?

Q. Yes.

A. Well, it would be hard to say. You mean the principal—do you mean the principal—all of them?

Q. All of them.

A. Well, I would not be able to tell you that, without going back and referring to them.

Q. Well, as near as you can remember.

A. Well, I have represented the Moultrie Packing Company, and Tifton Packing Company, the Macon Packing Company, and Sinclair Sales Company.

233 Q. Any other lines of food products?

A. That is practically all, except what I bought and sold, as well as I remember.

Q. Did you buy and sell as well as do a commission business?

A. I did some buying and selling; yes. That is, I buy a supply, to make up my line, anything else.

Q. What products do you buy and sell?

A. Why, a little meat you see, sometimes I would buy fresh meats, and sometimes I would buy some cattle out at the stockyards, and sometimes I would buy pigs.

Q. Did you slaughter the pigs and cattle yourself?

A. No, only in one instance have I slaughtered any pigs.

Q. Did you have them slaughtered for you, and sell the carcasses?

A. Yes.

Q. What character of hogs did you slaughter, what were they?

A. South Georgia.

Q. South Georgia hogs. And in what quantities?

A. Why, there was only one instance I slaughtered a carload of hogs, and I had so much trouble in getting them killed out at the abbatoir, I didn't bring in any more.

Q. Now, didn't you have a warehouse or plant here in Atlanta?

A. No; I have got a warehuse, yes.

234 Q. Did you have that while you were representing Moultrie Packing Company?

A. Yes.

Q. Who paid the rent on that, did you pay that?

A. Yes.

Q. Did you stand all the expenses of conducting your business as agent of the Moultrie Packing Company?

A. Yes; I stood all the expenses.

Q. That would include rent?

A. Yes.

Q. And hire of your salesmen?

A. Yes.

Q. And salaries?
A. Yes.
Q. Salaries of your office force?
A. Yes.
Q. And all the expenses incidental to maintaining your establishment?
A. Yes.
Q. And delivery. Did you deliver?
A. Yes, I was made an allowance by the Moultrie Packing Company for deliveries, but I stood for whatever the de-
225 liveries were, and made an allowance of so much per hundredweight for deliveries.
Q. Take the year 1916, were those expenses large or small?
A. Well, my expenses were small. They have always been light until the last eighteen months.
Q. And about what figure do you mean by small? About what did it cost you to conduct your business?
A. Well I mean I had a very small force, in fact I did nearly all of the selling myself for the first year and a half.
Q. Take the year 1916, about what would your expenses amount to for that year?
A. (Witness examining a book.) About $2,700.00.
Q. Then, your net on the account for 1916 would be the difference between your commissions, or would be your commissions less your expenses?
A. Yes.
Q. You stated, Mr. Stanaland, that you had from 150 to 200 customers. Were there any of those customers who made their purchases from you, based upon considerations other than price and quality?
A. I don't understand your meaning of that. Bought stuff from me other than on price and quality?
236 Q. Yes.
A. I cannot say that there were.
Q. That was the factor that influenced the sales?
A. Yes.
Q. Each one of these men is in business for pecuniary gain?
A. Yes.
Q. They try to buy as cheap as they could?
A. Yes.
Q. Now, Mr. Stanaland, I notice that when you went through your customer's ledger, and mentioned certain cus-

tomers to whom you sold goods, that you would turn over a number of pages before you would mention a customer's name. What were you looking for, why did you turn over the pages?

A. He asked me to mention some of my principal customers. That is, I inferred from that, that he meant customers that made larger purchases.

Q. And those were the customers that you attempted to give?

A. Yes.

Q. (By Mr. Taylor): You did not attempt to give all of them?

A. I did not attempt to give all of them, I went as far as he asked me.

Q. (By Mr. Horton): Were there any of those cus-
237 tomers that you mentioned to whom you sold meat exclusively, that is to say, to whom you sold meats to the exclusion of all other dealers?

A. No, sir.

Q. Were there any of those customers to whom you sold, say 50 per cent of their requirements?

A. I think I did.

Q. How many?

A. Well, it would be hard to say how many.

Q. Which customer have you in mind?

A. Well, I have a number of larger customers that handled soft pork almost exclusively.

Q. Well, mention please their names.

A. Well, Beuler Brothers was one of them at the time.

Q. Who?

A. Beuler Brothers, at 114 Whitehall, they were one of them.

Q. What do they do, run a market?

A. Yes.

Q. Do you know what their gross weekly business amounts to?

A. No, I do not.

Q. Is it not true that they are big buyers?

A. They are pretty big buyers, yes.

Q. Is it not true that they do three or four thousand
238 dollars of business a week?

A. I don't know how much they do.

Q. How would you estimate it?

A. I would estimate it by seeing the checks that they have,

and noticing mine in comparison with some of the other checks, the different weekly checks for the packing houses.

Q. They are large beef buyers as well as pork buyers, are they not?

A. What is that?

Q. They are large beef buyers, as well as pork buyers, are they not?

A. Yes, they buy beef too.

Q. Can you think of any other customers to whom you sold over 50 per cent of their requirements of pork?

A. Why, I would say that—well, I can mention one that I know I sold over 50 per cent of.

Q. Who was that?

A. The Sanitary Market Company.

Q. Is that a large buyer or small buyer?

A. They are large buyers; they were at that time very large buyers.

Q. Now, I take it the inference is that while you were
239 representing the Moultrie Packing Company, you gave them satisfaction?

A. Moultrie Packing Company?

Q. Yes.

A. As far as I knew I did.

Q. And you endeavored to dispose of their products to the best advantage?

A. To the best advantage possible.

Q. And you were able to do that?

A. Well, I didn't have any complaints to any extent.

Q. You sold all the products they shipped you?

A. Practically all of it, yes. There may have been some instances where I had some stuff that would spoil on me.

Q. Was that frequent or otherwise?

A. No, it was not frequent.

Q. And, was the quantity large or small?

A. Why, usually small. In the beginning I didn't have cooler facilities sufficient for taking care of the stuff.

Q. And would you say, compared to the total volume that you did, that the amount that was spoiled was inconsequential or otherwise?

A. Why, it was inconsequential.

Q. Well, then, when you say that you lost sales to
240 Swift & Company, you mean that you were later able to sell the goods?

A. Possibly so, yes, at a cheaper price, maybe.

Q. Yes. And you were always able to sell?
A. Yes, I guess I was.
Q. Never had any meat spoil on you because Swift & Company lowered the price, did you?
A. I don't recall that I did, any specific instance.
Q. If they did lower the price on you. Now, when you were representing the Tifton Packing Company, and the Macon Packing Company, were you selling soft hogs?
A. Yes.
Q. And there were four or five other concerns in this market selling soft hogs?
A. Yes; I think you are right.
Q. Now, it was the general practice of each one of these people, who were selling pork, to meet competition?
A. Yes, it is usually the case.
Q. And would it not be a fair statement to say that if Swift & Company lowered their price on soft pork, it might have been to meet the competition of some of these other people?
A. That is true.
Q. That was probably the case?
241 A. I suppose so, I don't know.
Q. Did you ever find that any of the other packers who were handling soft pork were making a price under the price you were making?
A. Yes.
Q. That was true when you were representing the Moultrie Packing Company?
A. In very few instances.
Q. And was it true when you were representing the Chipley Packing Company?
A. Well, I didn't represent the Chipley Packing Company very long.
Q. I mean Tifton.
A. The Tifton Packing Company? Yes that was true.
Q. And when you were representing the Macon?
A. Yes.
Q. Now, how many meat dealers—first, does Armour & Company do business in this territory?
A. Yes.
Q. Do they have a branch house here?
A. Yes.
Q. And how long have they had a branch house here,
242 to your knowledge?
A. That would be hard to say. I guess Armour &

Company probably has had a branch house here for twenty years, I don't know.

Q. And Wilson & Company, and their predecessors in business?

A. Yes.

Q. Sulzberger & Company, and Saulesberger & Schwartzchild?

A. Yes.

Q. They have a branch house here?

A. Yes, sir, Wilson & Company now.

Q. And for how long have they had one?

A. Well, it would be hard for me to say; I don't know.

Q. To the best of your knowledge.

A. Well, you see I haven't been in the meat business you know only about five years, and I would not remember naturally, I would not remember.

Q. Do you know whether they had one in 1915 when you came here?

A. Yes, sir, they had one then.

Q. And a number of years prior to that time?

A. Why, I suppose so; I don't know; I don't recall.

Q. And Morris & Company?

A. Yes, they had one here.

Q. They have a branch house here now?

A. Yes.

243 Q. They had one here in 1915, when you came?

A. Yes.

Q. And Cudahy Packing Company?

A. Yes.

Q. And they have a branch house here now?

A. Yes.

Q. And they had one in 1915, when you came?

A. Yes.

Q. And the Jacob Dold Packig Company?

A. Yes, they had one in 1915 when I came in. They withdrew in I don't recall just what time, but it was during the World War; they withdrew from the Atlanta market.

Q. Have they got one here now?

A. No.

Q. And Kingan & Company, have they a branch house here now?

A. Yes.

Q. Did Kingan & Company have one in 1915?

A. Yes.

Q. Well, the White Provision Company; do they sell wholesale meats here now?

A. Yes.

Q. Did they in 1915, when you came here?

244 A. Yes.

Q. Do you know whether they did prior to that time or not?

A. Why, I suppose they did; I don't recall.

Q. J. W. Clarke & Company, did they sell wholesale meats here?

A. J. W. Clarke Company, you mean?

Q. Not now?

A. No, they don't sell wholesale.

Q. When did they stop selling here?

A. I don't remember exactly.

Q. Well, to the best of your recollection.

A. Oh, it was in—

Q. Just approximately, I don't think it is important.

A. Well, it was in 1918, I think.

Q. Were they represented here in 1915, when you came here?

A. Well, they were brokers. J. W. Clarke Company were brokers—yes, they were here in 1915.

Q. They were here. And Mitchell Brothers?

A. Mitchell Brothers; yes.

Q. They are here now?

A. Yes, they are here now.

Q. Were they in 1915 when you came here?

A. I think they started in 1915, a little after, it may
245 have been 1916, when Mitchell Brothers started. I know they were right across the railroad from me, I don't recall whether they started in—no, I don't think they were not here in 1915, their predecessors were here, right across the street from me.

Q. Who were their predecessors?

A. Somebody and Cheathem, I think it was. I cannot remember the name of that concern just now at this time.

Q. Anyway, there was a concern selling wholesale meats there?

A. Yes.

Q. D. P. Ozburn, in business here now?

A. Yes, he is in business.

Q. Does he handle wholesale meats or does he—

A. He does not now.

Q. Did he in 1915, when you came here?
A. Yes.
Q. And for how long a time subsequent to 1915?
A. Why, up until 1920.
Q. Now, W. A. Perkins, is he in business here now?
A. He is, representing two or three different packers. They sell to arrive.
Q. He is selling wholesale meats here now?
A. Yes, he is selling wholesale meats.
246 Q. Was he in 1915?
A. I don't remember whether he was in 1915 or not.
Q. Can you remember in 1916?
A. Yes, I think he was in 1916.
Q. Does he represent the Hormel Packing Company, of Austin, Minnesota?
A. Yes, he is not now, but did at one time.
Q. Who does he represent now?
A. Why, it is hard to tell; I don't remember just who he represents now, I think he is representing two or three accounts.
Q. Is the Indiana Packing Company one of them?
A. What?
Q. The Indiana Packing Company?
A. No, sir.
Q. Now, C. W. Wright, does he sell wholesale meats here now?
A. No, sir.
Q. Did he in 1915, when you came here?
A. C. W. White?
Q. C. W. Wright.
A. I don't understand, I thought you said C. W. White.
Q. Does he sell wholesale meats here now?
A. Is that the initials. I don't remember C. W.
247 Wright. There is a man by the name of Wright here selling.
Q. Maybe I haven't got the initials right.
A. There is a man by the name of Wright, that has been in the brokerage business here for some little time.
Q. Represents the Cincinnati Abbatoir Company, does he?
A. He does now, yes.
Q. Well, that is the man I had in mind.
A. Yes.
Q. Was he here in 1915 when you came here?
A. No, sir.

Q. When did he come here?

A. Why, he was at that time, he was selling meats for some of the packers, some of the other packers here in town, I think, as well as I remember.

Q. When did he start out to handling wholesale meats, do you know?

A. Well, he has only been representing the Cincinnati Abbatoir Company recently. There was no party represented them previous to that time—I mean any other party who had charge of their sales. Wright had been just a salesman for them.

Q. The Atlanta butcher's abbatoir here, they sell wholesale meats here now?

Mr. Taylor: Mr. Examiner, I would like to ask in
248 what way this is cross examination, and the purpose of it. It seems to me it would be more in the line of direct examination than cross.

Mr. Horton: Mr. Examiner, the issue in this case is whether or not competition was restrained, for one thing. That has been what the counsel for the Commission has been attempting to prove. I would like to show that this city was at least fairly well supplied with wholesale meat dealers.

Mr. Taylor: The questions, however, are not limited to the class of meat involved in this issue.

Mr. Horton: What?

Mr. Taylor: The questions are not limited to the class of meat involved in this issue. The witness has testified in what time he was handling the class of pork he was handling.

Mr. Horton: Maybe when we get through we can make it a little more definite. We have two or three more names on my list here, I will ask the witness if they handled pork products.

Exam. Sadler: The objections will be noted.

Q. (The question read by the reporter.)

A. No, sir, the Atlanta Butcher's Abbatoir does not do any wholesale business at all.

249 Q. (By Mr. Horton) Well, do they have an agent here, who sells the products they kill?

A. No, sir, the Atlanta Butcher's Abbatoir is a public killing plant, killing for different butchers.

Q. Does W. F. Bettis, handle wholesale meats here now?

A. W. F. Bettis? There was a man by the name of Bettis

handling wholesale beef here, and he possibly sells some pigs too. He kills at the Atlanta Butcher's Abbatoir.

Q. Now, Cohen Brothers. Are they local slaughterers here?

A. Cohen Brothers, or Max Cohen. I know them as Max Cohen. They may be "Cohen Brothers."

Q. Is he a local slaughterer here?

A. Yes, sir; he is al ocal slaughterer here.

Q. Do they sell wholesale meats?

A. Yes.

Q. Did they in 1915 when you came here?

A. I think at that time it was Weinberg & Cohen, I am not sure about that.

Q. But they did business in 1915?

A. As well as I recall; yes, that is true.

Q. Now, the Evansville Packing Company, they have a branch here now?

250 A. Yes.

Q. A branch house?

A. Yes.

Q. And they sell wholesale meats?

A. Yes.

Q. Did they in 1915?

A. No, they were not here in 1915.

Q. They were represented by a broker, at that time, were they not?

A. I don't recall that they were.

Q. How early can you recollect them being in this territory?

A. It was about 1919, as well as I recall it, when they first came in.

Q. The Hormel Packing Company, of Austin, Minnesota, have they got a branch house here now?

A. Yes, sir, they have a branch house here now.

Q. Were they here in 1915?

A. No.

Q. Were they represented by broker in 1915?

A. I don't think so. I don't think they were represented here in 1915.

Q. How early can you recall them being represented here?

251 A. Well, I should say it was in 1918 or 1919, I don't recall which year, my recollection is it was about that

year. They were represented by Mr. W. A. Perkins at that time.

Q. Didn't he go into business about 1916?

A. Why, only as a broker for those people, which is one and the same concern.

Q. Now, the Cincinnati Abbatoir, or possibly Cincinnati Abbatoir Company?

A. Well, you had the same thing awhile ago, you know, about Mr. Wright.

Q. Did he represent them?

A. He represented them.

Q. They have a branch house here now?

A. Well, you would hardly call it a branch house. They sell—their fresh products to arrive. In other words, they sell this week for next week's delivery, but I think they carry a small stock of lard possibly, and dry salt meats here, but not any stock to any great extent.

Q. But they do sell pork products?

A. Yes, they sell both pork and beef products.

Q. Well, the St. Louis Independent Packing Company, have they a branch house here now?

252 A. No, they have no branch house here at all, sell to arrive.

Q. But, they are represented here?

A. Yes.

Q. And sell wholesale meats in this market?

A. Yes.

Q. Were they here in 1915?

A. No, sir.

Q. How early can you recollect them being in this market?

A. About the past twelve months, just about as far back as they came.

Q. Now, are the dealers more numerous today or less numerous than they were in 1915?

A. More numerous.

Q. That has been progressively so since 1915?

A. What did you say?

Q. That has been progressively so since 1915?

A. Well, I cannot say that it has been altogether progressive up to that time, but in the last—well, since the war, since the armistice was signed, there have been a great many more here than there was previous to that time.

Q. Now, can you think of any other people who are han-

dling wholesale meats here now, that I have not mentioned?

253 A. I think you have covered it pretty well. I was trying to think of it awhile ago, but I don't recall any more.

Mr. Taylor: Mr. Examiner, may it be understood that my objection goes to all of these questions which have been asked up to this time with regard to the various concerns who are handling wholesale meats generally in this market?

Mr. Horton: All right.

Exam. Sadler: Yes, it will go to all.

Q. (By Mr. Horton) Now, are there in any of these concerns that I have mentioned, that do not handle pork products?

A. I don't think there is any of them that don't handle pork products?

Q. They all handle pork products?

A. I think so, to a certain extent. Those butchers you mentioned at the Atlanta Butcher's Abbatoir only handle pork products in the form of whole carcass of pigs and hogs, they do not handle any pork cuts.

Q. Now, are there any of them that do not handle beef?

A. I don't know of any that don't handle beef; I don't recall any of the number.

Q. Now, in 1917, can you give me the names of the dealers who were handling soft hogs, soft pork, and pork products?

254 A. In 1917?

Q. Yes, sir.

Q. You mean any part of 1917, or just take the year 1917 as a whole, or either part of it?

Q. Well, give me the answer the best way you can, and if somebody started up during that year at least, about when they started.

A. In 1917?

Q. Yes.

A. I don't know of any other dealers that were coming in here except Andalusia and the Moultrie Packing Company in 1917; I don't remember.

Q. How about the White Provision Company?

A. Well, the White Provision Company was here in 1917.

Q. And, didn't they handle soft pork?

A. Yes, they handled some soft pork, but their great

hobby was that they handled Tennessee pork, that is Tennessee hogs, which was firm hogs.

Q. Yes, but they did handle some Southern pork?

A. They did handle some Southern pork, yes.

Q. J. W. Clarke was here?

A. Yes.

255 Q. And Mitchell Brothers?

A. But, J. W. Clarke Company were handling the Andalusia products. Mitchell Brothers never handled any Southern pork, except what they bought from me. Now, the J. W. Clarke Company, they handled Southern pork altogether.

Q. Now, are there any others?

A. That handled Southern pork?

Q. Yes.

A. I don't remember, any others during that year. The Chipley Packing Company may have come in here at that time, but if they were, as well as I recall, they were represented by the J. W. Clarke Company, who handled the Andalusia account too.

Q. As well as the Chipley account?

A. As well as the Chipley account.

Q. Now take the year 1918, was the White Provision Company handling any Southern pork at that time?

A. Yes, I think they were, to a certain extent.

Q. Do you recollect what plant they represented at that time?

A. The White Provision Company? Well, the White Provision Company, they are slaughterers themselves, they are a packing house.

Q. They slaughter?

256 A. They have a local plant here.

Q. They have a local plant here?

A. Yes.

Q. I see. Then, they sold their own output?

A. Yes, they sold their own output.

Q. And was J. W. Clarke & Company representing somebody in 1918?

A. Yes, I think they did.

Q. The Chipley Packing Company?

A. I don't think—they possibly represented Chipley Packing Company, but I don't think they got any—I think that the quantity of meat that they got from the Chipley Packing Company at that time was negligible; the fact of the

business, nearly all of the stuff that came from Chipley, came in by express, and it was in very bad condition when it came in, I happened to see some of it.

Q. Who represented the Macon Packing Company in 1918?

A. In 1918. I think I did—no, J. W. Clarke Company represented them previous to the time that I did. That is the way it was. I don't recall whether the Macon Packing Company was represented here in 1918 or not. If they were, they were represented by the J. W. Clarke Company.

Q. The plant was built at that time, was it not?

257 A. I don't recall that it was. I began representing them in 1919.

Q. You stated that you secured the Tifton account in February, 1918?

A. I said that I received my first shipment from them in February, 1918.

Q. You stated that at that time there was a number of others selling Southern pork in this territory, including the Waycross Packing Company, Chipley Packing Company, Statesboro Packing Company, and Armour & Company?

A. Armour & Company—well, that was—I don't recall that was from 1915 up to—during that time, all of those packing plants came in here, but I don't remember whether it was just in 1918 or not.

Q. Do you know the firm of Williams & Johnston?

A. Yes.

Q. Who was their buyer?

A. Mr. Hendrix.

Q. Is he the gentleman that testified here yesterday, Mr. V. J. Hendrix?

A. Yes.

Q. Are you frequently with Mr. Hendrix?

258 A. Why, not to any more extent than I am with any of my other customers.

Q. You seemed to think that you can get his business, if you can meet the prices of your competitors.

A. Well, that is true; I have got a good many friends among the trade here in Atlanta.

Q. Have you had any conversation with Mr. Hendrix about testifying before this hearing?

A. I don't recall that I have.

Q. Are you sure you did not have?

A. I don't remember having any conversation with him.

Yes, I did. I do remember it too, I hadn't thought about it before that time. He asked me what the Trade Commission wanted up here. I remember he was down at my place, I didn't recall it at that time. He asked me what the Trade Commission wanted with him. I said, "It is to testify in the case of the Trade Commission, about the selling of the Moultrie Plant to Swift & Company." He said: "What do they want?" I said: "I don't know, further than that. I guess that is what they want." He said he had a subpoena to come up here.

Q. Do you know Mr. Haycraft, the Examiner for the Commission here?

259 A. Why only until recently.

Q. Pardon?

A. I only met him recently.

Q. How long ago did you meet him?

A. Why, it has been a day or two ago.

Q. Did you give Mr. Johnston's name to Mr. Haycraft?

A. Did I give him the name? I don't recall that I did.

Q. Do you recall that you didn't give it to him?

A. Did I give Mr. Johnston the name of Mr. Haycraft?

Q. Didn't you give Mr. Haycraft the name of Mr. Johnston as a witness that would testify for the Commission? I mean Mr. Hendrix name to Mr. Haycraft?

A. I don't recall that I did.

Q. Are you sure you did not?

A. I am sure that I did not. I only gave him the name of Williams & Johnston, but I do not recall giving him the name of Mr. Hendrix.

Mr. Haycraft: Mr. Examiner, with counsel's permission, I would like to make a statement with reference to the line of questioning.

Mr. Horton: It is quite agreeable to me, Mr. Haycraft; you can make all the statement you want.

260 Mr. Haycraft: One of the Commission's Examiners secured a list of customers from the J. W. Clarke Company, and from the Andalusia Packin Company in the summer of 1918, and among them was Williams & Johnston Company, and while I had a conversation with Mr. Stanaland day before yesterday, I asked him if he sold the Williams & Johnston Company, and that was all the information that was furnished me by Mr. Stanaland, with regard to that concern. At that time, I didn't know who was the buyer for Williams

& Johnston Company, and did not know until I called at their place of business.

Q. (By Mr. Horton) How many shares of stock did you have in the Moultrie Packing Company?

A. I don't think I had but one.

Q. You sold that of your own free will?

A. Why—well, I sold it because I didn't think that—I cannot say it was of my own free will, yet it was too, I sold it on the solicitation of Mr. W. C. Vereen, the president of the Moultrie Packing Company, because he said he wanted the stock to make a sale.

Q. Well, you made up your own mind freely to sell it?

A. I made up my mind to sell it, of course, because I was offered a profit on it.

261 Q. Pardon?

A. Because I was offered a profit on the stock.

Q. You sold it at a profit?

A. Yes, sir; I sold it at a profit.

Q. Have you ever tried to buy any pork products from Swift & Company at Moultrie or Andalusia?

A. I don't recall that I have—yes, I have. Not at Andalusia but from the branch here.

Q. You mean the local branch here?

A. Yes.

Q. Did you succeed in trading with them or not?

A. Why, I have traded with them at times.

Q. You have bought from them?

A. Yes.

Q. And when you bought, did you get the soft Georgia hogs?

A. Why not always, but I bought them at—I knew I was buying—I either bought soft pork or I bought Western pork.

Q. You bought what you started out to buy?

A. Yes, if the price was right I bought it.

Q. Now when was it that you sold out the last of the pork that you had on the Moultrie Packing Company?

A. When did I sell out the last? November 9th, 1917,
262 seems to be the last invoice.

Q. Now you sold for them merely upon a commission?

A. Yes.

Q. And if there was any spoiled or any loss upon this product, it was stood by the owner, and not by yourself?

A. Yes.

Mr. Horton: I think that is all.

Q. (By Mr. Horton) One more question, please. What is the population of Atlanta?

A. The last census gives it a little more than 200,000—200,000 and something I think. You can get the census.

Redirect Examination.

Q. (By Mr. Taylor) Do you know what the population of Atlanta was in 1915, Mr. Stanaland?

A. No, sir.

Q. Do you know whether it has grown since then?

A. Why evidently it has. The population in 1910 was 154,000, but as just what the population was in 1915, I could not say, because I have no way of telling, but Atlanta has made progress evidently, or they would not have increased to that extent.

Q. Now Mr. Horton asked you if you had bought any pork products from Swift & Company since your connec-
263 tion with the packing company terminated, I call your attention to the last paragraph of the letter marked "I" for identification. (Handing witness a paper.) Does that refresh your recollection with regard to any purchases or attempted purchases that you made?

A. Well now he asked me the question if I had bought any products from them. This letter here, my intention in this letter was to convey that if they had anything to offer in carload lots, that I would be glad to consider a price on them, but I have never bought anything from Swift & Company or the Moultrie Packing Company since this letter or since my commission expired or terminated, in carlots.

Q. From the Moultrie Company or Swift & Company?

A. Or Swift & Company.

Q. Did Swift & Company respond to that request contained in the last paragraph of that letter?

A. No, sir; if they did, I did not receive it.

Q. Now you say that your last invoice of Moultrie goods was dated November 9th, 1917?

A. Yes.

Q. Can you determine when you received the last shipment from the Moultrie Packing Company?

A. I think I can. That has already been brought
264 out, I think, that was that....

Mr. Horton: October 27th or 28th.

The Witness: October 26th as well as I recall, it, that was already brought out.

Q. (By Mr. Taylor) Mr. Stanaland, you were asked by Mr. Horton if you sold your stock voluntarily, I will now ask you if you had known that by holding it you could have prevented Swift & Company from obtaining control of the stock of the Moultrie Packing Company, would you have sold it?

Mr. Horton: I object to that your Honor, what difference does it make what he would have done?

Mr. Taylor: I think there is some force in your argument at least, or would be up to the time that you have gone into it yourself, but now I think it is perfectly legitimate for me to pursue it to the logical conclusion.

Mr. Horton: In the first place you have got a question of what I mean is going to do in the future; in the second place you have got a question of law, you have got a question of a lot of other things, I think it is entirely incompetent; it is immaterial anyway. It is not what he would have done, it is what he has done.

Mr. Taylor: Your objection would be perfectly sound 265 if you had not gone into the matter yourself.

Exam. Sadler: The objection will be noted.

The Witness: Give me the question again.

Q (Question read by the reporter.)

A. I would not.

Q. (By Mr. Taylor: Will you state why, Mr. Stanaland?

Mr. Horton: I object to that; it is not only going beyond the wildest stretch of the imagination to ask the question of a witness as to what he would have done, but going one space beyond, to ask him why he would not have done it. It is entirely immaterial to the issue.

Exam. Sadler: The objection will be sustained.

Mr. Taylor: Well, Mr. Examiner, I think that this question goes right to the meat of the issue here. We have a man who is right in the business of representing this corporation whose stock was acquired represented them exclusively in this territory, and whose business was destroyed by reason of the acquiring of this stock by the respondent, and who is eminently qualified to answer the question that was asked of him, and what he knew and realized would be the result of the acquisition of the stock.

Exam. Sadler: I think that the question of the coun-
266 for the Commission was too broad. If you will bring it out in correct questioning, you can cover it.

Mr. Taylor: Why, on the one hand, if I attempt to bring it out in the way suggested by the Examiner, I fear my question will be subject to objection that it is leading.

Exam. Sadler: Well you can ask your question and see what the objection is.

Q. (By Mr. Taylor) How long, Mr. Stanaland, had you owned the share of stock which was sold as described?

A. I don't remember; I think it was possibly six or eight months.

Q. You acquired it while you were handling the account or the Moultrie Packing Company?

A. Yes, sir.

Q. Will you state why you acquired it?

A. State what?

Q. I withdraw that question. Would you have acquired that share of stock if you had not been handling the account of the Moultrie Packing Company?

A. No, sir; I tried to get more stock, but I could not get it at the time that I got this share.

Q. That was the reason that you tried to get more, was the same that you were handling the account of the Moultrie Packing Company?

267 A. Yes.

Q. And you desired to retain the account of the Moultrie Packing Company?

A. I certainly did.

Q. Did you anticipate that the acquisition of the stock, or the control of the stock of the Moultrie Packing Company by Swift & Company, would result in any difference in regard to that handling of the account?

Mr. Horton: I object to that. It would not make any difference whether the witness anticipated it would or not.

Exam. Sadler: The objection will be noted.

A. Why, I had every reason to believe that I would not be able to handle the account if Swift & Company acquired the account, because they have their own—they had their own branch house here, and there would not have been any reason for them to have kept a broker, when they had their own selling agency here in Atlanta.

Q. Did you know just before the acquisition of the stock of the Moultrie Packing Company by Swift & Company, what

portion of the pork business in Atlanta was being done by Swift & Company?

A. No, I don't know.

268 Q. Do you know whether they were selling as much pork as you were?

A. I don't think there was any packer in Atlanta selling as much pork as I was at that time when I could get the products.

Q. Now, going back to the time when you first got the account of the Moultrie Packing Company, do you know what the proportions were then as between yourself and Swift & Company, approximately, or even remotely?

Mr. Horton: First answer yes or no, please?

A. I didn't quite catch the meaning of your question there. I don't know what Swift was selling, but of course when I first got the account my sales were very small.

Mr. Taylor: That is all.

Recross Examination.

Q. (By Mr. Horton) Do you know the date on which you sold that share of stock?

A. No, not without referring to the letter there in reference to it or correspondence, I don't recall the date.

Q. I show you Exhibit No. 67, and ask you whether it was before that or after that date, that you sold the stock? (Handing witness a paper.)

A. It was before this date.

269 Q. That you sold the stock?

A. That I gave them power of attorney. I gave Mr. Vereen power of attorney.

Q. But when you received this letter on June 18th, your share had not been sold, yet you sent it to Mr. Vareen?

A. I sent it to Mr. Vareen, I don't know whether it had been sold or not. The matter was entirely in Mr. Vareen's hands.

Q. Well, Mr. Vareen wrote you on June 18th, and he said, quoting from Exhibit No. 67: "Will say that your stock certificate has been received by the Moultrie Packing Company, and will be forwarded with all the stock certificates in a few days to Chicago for collection."

A. Yes.

Q. And also says a little further down in the letter: "It is probable that he will not turn over the plant to Swift &

Company for possibly ten days yet. Some of their men are already here."

A. Yes.

Q. Did you make any effort to stay the sale after you received that letter?

A. No, there wasn't any use.

Q. Well, you didn't make any effort, did you?

270 A. No, sir.

Q. You didn't wire Mr. Vareen to stop the sale of that stock, you didn't want to sell your stock to Swift & Company?

A. No.

Q. You didn't do anything?

A. No, I did not.

Q. And this was at least some notice to you at least enough to put you on reasonable suspicion that the stock was to be sold to Swift & Company?

A. Yes.

Q. Now, Mr. Stanaland, you stated that from June, 1916, to May, 1917, your total business for that twelve month period amounted to $238,000.00?

A. Yes.

Q. That was all the products you handled of the Moultrie Packing Company, was it not?

A. Yes.

Q. Now, dividing that off into cars, how many cars would that average a week?

A. It would be hard to say the average, because 10,000 pounds is the minimum car from down there. It might have run 10,000 pounds or it might have run 20,000, it might 271 have run 30,000, I could not say.

Q. What would be the average price of the products that you sold for the Moultrie Packing Company?

A. Well, that would vary according to the market.

Q. Well, between June, 1916, and May, 1917.

A. What would be the average price?

Q. Yes.

A. Well, it would be right hard to estimate.

Q. Average 12 cents a pound?

A. Well possibly so. It might be more, you see, the price fluctuated quite a good deal then, in that time. They were mostly advancing though, for 1916 and 1917. They were higher than they had been previous to that time.

Q. Well, do you think that 15 cents a pound would be a fair average?

A. Well, I would think that 15 cents a pound would be a fair average.

Mr. Taylor: Mr. Examiner, it seems to me that the respondent can show actual sales by Mr. Stanaland better from their own records than from any loose computation of this character.

Q. Now what products would that include, in that year?

A. That would include all food products from the 272 packing company.

Q. What would they be?

A. They would be fresh meat.

Q. Fresh pork?

A. Fresh pork.

Q. And that fresh pork would include what?

A. Would include shoulders, hams, loins, neck-bones, spareribs, pork trimmings, and practically all of the commodities in the way of fresh pork, that is sold by a packing house.

Q. All right. Then, besides fresh pork what would it be, lard?

A. It would be lard, pure lard, and smoked meats, and some dry salt meats too.

Q. All right, taking your total volume of sales as $238,000.00, and dividing that by the average of 15 cents a pound, you get 1,586,666 pounds?

A. Yes.

Q. That is the total amount of products that you handled in one year?

Mr. Taylor: Mr. Examiner, I wish to object to this examination. The records of this company have been subpoenaed here to show what the output was, what Mr. Stanaland has handled, and what other parties have handled, and this 273 is not a proper cross examination; especially it is mere guess-work.

Mr. Horton: Mr. Examiner, I want to make my point clear, I will say that the witness has stated that he thought he was handling as much or more pork than any other packer in Atlanta, and I questioned that statement. I don't doubt the witness' sincerity at all, but I think his knowledge is insufficient to base an accurate estimate upon. I want to show that this is the case. I want to get it down to some comparable basis.

Mr. Taylor: Well then, it should be shown by competent evidence, and not by guesswork.

Mr. Horton: Well, if the witness has guessed at it when he made the statement, that is what I want to show.

The Witness: I haven't guessed. I may have guessed at the tonnage there, but I have not guessed at the amount of sales involved myself, that is from the records.

Q. But you guessed, or you estimated, or you gave your own opinion, when you stated that you handled more pork than any other packer in Atlanta?

A. I said I thought I was.

Q. Yes. I want to show.

A. Well, that is true.

Q. Well, I don't doubt your sincerity at all, Mr. Stan-
274 aland, I think you are mistaken about that.

A. Well, that may be true.

Q. If I can get it down to a comparable basis of pounds or dollars or tonnage or something....

Mr. Taylor: Well, you have got the amount of the dollars and cents that Mr. Stanaland has handled for a given period of months.

Mr. Horton: I want to bring it down a little further, and bring it down by weeks.

Mr. Taylor: Your records show exactly what he sold in pounds.

Mr. Horton: Beg your pardon, Mr. Taylor, that was not shown.

Mr. Taylor: I mean the records of the Moultrie Packing Company.

Mr. Horton: I haven't the records of the Moultrie Packing Company; I am taking this testimony, the testimony I am cross examining him upon, from the points on which he has testified.

Mr. Taylor: Swift & Company have them; they succeeded to all the property.

Mr. Horton: Granting that; I am cross examining this witness upon a point, upon which he has directly testified.

Mr. Taylor: Yes, but you are cross examining upon the basis of guesswork, that he has not testified regarding,
275 trying to bridge out and cover a point that he has not testified to, by getting him to guess.

Mr. Horton: Well, what does the Examiner rule please, upon the objection?

Exam. Sadler: The objection will be noted and the testimony will go in for what it is worth.

Q. (By Mr. Horton.) Now that gives, 1,586,666 pounds.

A. Yes.

Q. That total volume for the year. Dividing that by 52, it equals 30,517 pounds a week?

A. Yes.

Q. And that would be three 10,000-pound cars or, would it be one and a half 20,000-pound cars?

A. One and a half 20,000-pound cars?

Q. Yes, and a little over. 517 pounds over.

A. How do you make that? You said it would be three 10,000-pound cars?

Q. It would be three 10,000 pound cars a week.

A. But one.

Q. One and one half.

A. One and one half?

Q. 20,000-pound cars.

276 A. Or one 30,000 pound car.

Q. And 517 pounds over.

A. Yes.

Q. Now, do you think that represents the fair average of what you were doing, reduced to a carload basis?

A. Well, that is hard to tell, because it is merely guesswork, as to the average price there, because I would have to refer to the records. I would have to go back and examine my records to be able to tell that. The other represents the dollars and cents you know, and that amount of tonnage would vary there in accordance with the average price at that time if the price was 10 cents per pound.

Q. That is correct. Then, can you take your records and give us your tonnage for the year?

A. No.

Mr. Taylor: May it be understood that my objections goes to all this line of testimony and questions?

Exam. Sadler: Yes.

Q. (By Mr. Horton.) Can you give us your volume in any other way so that it can be compared?

A. Only in the way I have given it. I have given it in dollars and cents, and I have given it in the amount of
277 commissions, and as to the tonnage, I don't know where to find my records on that. Whenever we would keep up with the tonnage records, and they may be in my office, but after I got my commission check for the past month, except

for stock record, they were not—if they tallied with what I received from the Macon Packing Company, there was hardly any necessity for my keeping the records further.

Mr. Taylor: You mean Moultrie Packing Company?

The Witness: Moultrie Packing Company.

Mr. Horton: That is all.

Mr. Taylor: That is all.

Exam. Sadler: The witness will be excused, and we will take a recess until 2:00 o'clock P. M.

(Whereupon, at 12:20 o'clock P. M., a recess was taken until 2:00 o'clock P. M., the same date.)

After Recess

2:00 o'clock P. M.

Exam. Sadler: The hearing will come to order.

FRANK OWEN MILLER was thereupon called as a witness, and having been duly sworn, testified as follows:

278 *Direct Examination.*

Q. (By Mr. Taylor.) What is your full name, Mr. Miller?

A. Frank Owen Miller.

Q. Where do you reside?

A. Augusta, Georgia.

Q. And what is your business at the present time?

A. Manager of the Morris & Company branch house.

Q. What business is Morris & Company in?

A. Packers.

Q. How long have you been with Morris & Company?

A. I have been with them for thirteen months.

Q. What was your business previously to—connected with the selling of meats and meat products?

A. Yes, sir.

Q. How long have you been in that general line of business?

A. About sixteen years.

Q. And where did you first commence?

A. Tampa, Florida.

Q. Were you in business for yourself at that time?

A. No, sir; I was with Swift & Company.

Q. And in what capacity with Swift & Company?
A. I started as Sales Manager.
279 Q. And how long did you remain there with Swift & Company in that capacity?
A. I was there about eight months.
Q. And then what did you do?
A. I went to Meridian, Mississippi, for Swift as manager of the branch.
Q. And how long were you at Meridian as manager of the Swift branch?
A. I was there about five years.
Q. And then what did you do?
A. I went in business for myself at Hattiesburg, Mississippi, for about ten months, brokerage business.
Q. And after the ten months at Hattiesburg?
A. Back with Swift, and came to Augusta, Georgia, as manager.
Q. And went with Swift at Augusta, Georgia, doing the same thing?
A. Yes.
Q. And what was your connection there with Swift & Company?
A. Manager of the branch.
Q. Manager of the branch house?
A. Yes, sir.
Q. And how long were you there?
280 A. I was there about five years.
Q. In that capacity all the time?
A. Yes, sir.
Q. And then what did you do?
A. I came to Atlanta as manager for Swift about a year and a half.
Q. That is manager of the branch house here at Atlanta?
A. Yes, sir.
Q. And when was this, what year?
A. It was in 1913.
Q. Do you recall the time of the year?
A. My recollection is it was April, 1913.
Q. That you came with them here?
A. Yes, sir; it might have been a month or so earlier than that.
Q. And after that what did you do?
A. I went in business for myself with the J. W. Clarke Company.

Q. What was the J. W. Clarke Company?
A. They were brokers.
Q. Was it a corporation or partnership or what?
A. Yes, sir; corporation.
Q. And what was your relation to the corporation?
A. I first went in there as vice-president.
281 Q. Were you a stockholder?
A. Yes, sir.
Q. And director?
A. Yes, sir.
Q. And when was this that you first went in with the J. W. Clarke Company?
A. That was in 1914, October, if I remember correctly.
Q. And how long did you remain vice-president of the J. W. Clarke Company?
A. Only a few months.
Q. And what was your next office?
A. I was elected president and manager.
Q. And how long did you continue as president and manager?
A. I continued as long as the J. W. Clarke Company stayed in business, that was up until October, 1919.
Q. Now, did the J. W. Clarke Company—please describe more fully the nature of the business of the J. W. Clarke Company.
A. They were brokers, handled various products on consignment, and also for direct shipments. I worked the jobbing trade, and also the retail meat trade.
Q. Did they have an account with the Andalusia Packing Company at any time?
282 A. Yes, sir.
Q. When was that account acquired?
A. It was shortly after the Andalusia Company went in business, but just when that was, I do not know, without I had something to refresh my memory.
Q. Can you state about what year it was?
A. It was 1916, I think.
Q. Can you recall the time, the season of the year?
A. I think it was August.
Q. Now what line did you handle for the Andalusia Packing Company?
A. We handled all of their products, fresh meats, fresh pork, fresh beef, smoked meats, and some little dry salt meats.

Q. What was the character of the pork?

A. Just what do you mean, whether it was firm or soft?

Q. No, I mean where did the hogs come from, and what were they known as?

A. They were known as soft hogs, raised or peanut-fed, fattened on peanuts and things of that kind, made the soft meat.

Q. I show you a paper here, will you state what that paper is? (Handing witness paper.)

A. This is where the Andalusia Packing Company re-
283 quested a statement of all our outstanding contracts.

Q. That is a letter you received from the Andalusia Packing Company?

A. Yes, sir.

Q. At that time you were a broker for the Andalusia Packing Company?

A. Yes, sir.

Q. And had the Andalusia Packing Company's account?

A. Yes, sir.

Q. And the date of the letter is July 2nd, 1917?

Mr. Taylor: I offer it in evidence. (Handing paper to counsel for respondent.)

Mr. Horton: No objection.

Exam. Sadler: The letter will be received as evidence and marked Commission's Exhibit No. 71.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit No. 71.)

Q. (By Mr. Taylor.) What is this paper which I hand you? (Handing witness a paper.)

A. This is a letter from the Andalusia Packing Company, dated July 10th, with reference to blank statements.

Mr. Taylor: I offer the letter in evidence. (Handing
284 same to counsel for respondent.)

Mr. Horton: I object to this on the ground that it is immaterial to the issue and contains statements made ex parte, which could not be binding upon this respondent or admitted in evidence against it; and it is immaterial.

Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked "Commission's Exhibit No. 72.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit No. 72.)

Q. And what is this paper which I have now handed you?

A. This is a copy of a letter I wrote the Andalusia people

under date of July 12th, 1917, with reference to report that they had sold out to Swift & Company.

Q. That is a carbon copy of the original letter which you wrote to the Andalusia Packing Company?

A. Yes.

Mr. Taylor: I offer the copy in evidence. (Handing same to counsel for respondent.)

Mr. Horton: I object to this, first, upon the ground that it is a copy; second, that the facts necessary to raise the presumption that the letter had been received by the
285 Andalusia Packing Company have not been shown; third, that it is immaterial, hearsay, and self-serving declaration.

Mr. Taylor: Mr. Examiner, I will supply the answer to the second objection in a very few minutes here.

Exam. Sadler: The same ruling as applies to letters marked for identification, F, G, H, I, J, will apply on this letter.

Mr. Taylor: I also ask that this letter be marked for identification.

Exam. Sadler: The letter will be marked for identification the letter K. (Ex. 117.)

(The letter referred to was thereupon marked "K" for identification.)

Q. (By Mr. Taylor.) Mr. Miller, what is this paper which I now hand you? (Handing witness paper.)

A. This is a telegram I received from the Andalusia Packing Company, July 14th, 1917.

Mr. Taylor: I offer that telegram in evidence (handing same to counsel for respondent.)

Mr. Horton: I object to this on the ground it is immaterial.

Exam. Sadler: The objection will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 73.

286 (The paper referred to was thereupon received as evidence, and marked Commission's Exhibit No. 73.)

Q. (By Mr. Taylor.) Please state what this paper is which I now hand you?

A. This is a letter we received from the Andalusia Packing Company under date of July 16th, 1917. Do you want the contents of it?

Mr. Taylor: No.

I offer this letter in evidence. (Handing same for counsel for respondent.)

Mr. Horton: I object to this upon the ground that it is not germane to the issue; that it is an ex parte declaration, and not material.

Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 74.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit 74.)

Q. (By Mr. Taylor.) Now, Mr. Miller, will you please look at this copy of the letter "K" for identification, and also look again at Exhibit 74, the letter dated July 16th, and tell me whether or not the copy marked "K" for iden-
287 tification, is the one the receipt of which is acknowledged in Exhibit 74? (Handing witness the papers referred to.)

A. Yes, sir.

Q. What is this paper which I show you, Mr. Miller? (Handing witness another paper.)

A. It is a letter we received from the Andalusia Packing Company under date of July 19th, 1917.

Mr. Taylor: I offer this in evidence. (Handing same to the counsel for respondent.)

Mr. Horton: This is objected to on the ground it is not germane to the issue; and an ex parte declaration, and is immaterial.

Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 75.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 75.)

Q. (By Mr. Taylor.) Mr. Miller, this letter states that request is being made—it states that the letter is being written in conformity with the request of Mr. Davis, do you know who Mr. Davis is, who is referred to there? (Handing witness paper.)

A. No, sir; I do not.

Q. What is this paper, which I now show you?
288 (Handing witness another paper.)

A. This is copy of a lettehr I wrote the Andalusia Packing Company July 20th, 1917.

Q. That is a carbon copy of the original letter which you sent to the Andalusia Packing Company?

A. Yes, sir.

Mr. Taylor: I offer this in evidence. (Handing same to respondent's counsel.)

Mr. Horton: Objected to, first, on the ground it is a carbon copy; second, the facts necessary to raise the presumption it has been received by the Andalusia Packing Company have not been shown; third, that it is an ex parte declaration and not material.

Mr. Taylor: I will fully answer the second objection when I offer the next exhibit, Mr. Examiner.

Exam. Sadler: The same ruling will be on this letter as upon previous letters marked for identification. Do you wish this letter to be marked for identification?

Mr. Taylor: Yes.

Exam. Sadler: This letter will be marked the letter L.

(The letter referred to was thereupon marked "L" for identification.) (Ex. 118.)

289 Q. (By Mr. Taylor) What is this paper which I now hand you, Mr. Miller?

A. It is a letter which I received from the Andalusia Packing Company under date of July 25th, 1917.

Q. Now, will you please again look at paper marked "L" for identification, and read the opening sentence of that letter of July 25th, and tell me whether or not that acknowledged receipt of the letter, copy of which is marked Exhibit "L"?

A. Yes; it does.

Mr. Taylor: I offer the letter of July 25th, 1917, from the Andalusia Packing Company, in evidence. (Handing letter to counsel for respondent.)

Mr. Horton: I object; first on the ground that it is an ex parte declaration and should not be received or admitted in evidence against the respondent; second, that it is hearsay and immaterial.

Mr. Taylor: The ex parte referred to is the Andalusia Packing Company?

Mr. Horton: Both parties.

Mr. Taylor: What two?

Mr. Horton: The Andalusia Packing Company and J. W. Clarke Company.

290 Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 76.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 76.)

Q. (By Mr. Taylor) What is this paper which I now hand you? (Handing witness a paper.)

A. This is a carbon copy of the letter I wrote the Andalusia Packing Company under date of July 28th, 1917.

Q. And that is replying to the same letter, which is received here as Exhibit 76?

A. Yes, sir.

Mr. Taylor: I offer the copy in evidence.

Mr. Horton: Objected to, first, on the ground it is a carbon copy; second, the facts necessary to raise the presumption of its receipt by the Andalusia Packing Company have not been shown; third, that it is an ex parte declaration; fourth, that it is hearsay and incompetent and not germaine to the issues.

Exam. Sadler: The ruling on this letter will be the same as on the previous letters marked for identification; and this letter will be marked the letter "M" for identification.

(The letter referred to was thereupon marked "M" for identification.) (Ex. 119.)

291 Q. (By Mr. Taylor) What is this paper which I now hand you? (Handing witness paper.)

A. This is a telegram received from the Andalusia Packing Company, July 31st, 1917.

Mr. Taylor: I offer this telegram in evidence. (Handing telegram to counsel for respondent.)

Mr. Horton: This is objected to, first upon the ground that it is not germane to the issues; it is hearsay and immaterial; second, that it is an ex parte declaration.

Mr. Taylor: Do you seriously urge that last objection notwithstanding the fact that Swift & Company owned all the stock of the Andalusia Packing Company at this time?

Exam. Sadler: The objection will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 77.

(The telegram referred to was thereupon received as evidence, and was marked Commission's Exhibit No. 77.)

Mr. Horton: It can be understood that my objections go to this entire line of exhibits, and I will not be bothered to repeat each one of them.

Exam. Sadler: Yes.

292 Mr. Haycraft: That is where there are carbon copies objected to.

Mr. Horton: That is if they are carbon copies, for the reasons I have heretofore stated.

Q. (By Mr. Taylor) What is this paper I now hand you, Mr. Miller? (Handing witness paper.)

A. This is a carbon copy of the letter I wrote the Andalusia Packing Company under date of August 9th, 1917.

Mr. Taylor: I offer this copy in evidence. (Handing same to respondent's counsel.)

Mr. Horton: We repeat our objections.

Exam. Sadler: The same ruling will apply to this letter as applies to letters marked for identification, and this letter will be marked letter "N" for identification. (Ex. 120.)

(The letter was thereupon marked the letter "N" for identification.)

Q. (By Mr. Taylor) What is the letter which I now hand you, Mr. Miller?

A. This is the letter we received from the Andalusia Packing Company under date of August 10th, 1917.

Mr. Taylor: I offer the letter in evidence. (Handing same to respondent's counsel.)

293 Mr. Horton: We repeat all the objections heretofore urged.

Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Comminssion's Exhibit No. 78.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 78.)

Q. (By Mr. Taylor) Mr. Miller, will you now look at Commission's Exhibit "N" for identification, which I now hand you, also at Exhibit No. 78, which I also hand you, and tell me whether the letter of August 9th, to which Exhibit 78 is in reply, is the letter, copy of which appears as Commission's Exhibit "N", for identification.

A. Yes, sir.

Q. What is this paper which I now hand you? (Handing another paper.)

A. This is the letter we received from the Andalusia Packing Company under date of August 15th, 1917.

Q. And by "we" whom do you mean?

A. The J. W. Clarke Company.

Mr. Taylor: I offer this letter in evidence. (Handing same to counsel for respondent.)

Mr. Horton: We repeat all of the objections heretofore urged.

Exam. Sadler: The objections will be noted and the
294 letter will be received as evidence and marked Commission's Exhibit No. 79.

(The letter was thereupon received as evidence, and marked Commission's Exhibit 79.)

Q. (By Mr. Taylor) What is the paper which I now hand you? (Handing witness a paper.)

A. This is a carbon copy of a letter I wrote the Andalusia Packing Company under date of August 16th, 1917.

Q. By saying that you wrote it, you mean just what?

A. I wrote the letter for the J. W. Clarke Company as manager.

Q. And the original of that letter was mailed to the Andalusia Packing Company, was it?

A. Yes, sir.

Mr. Taylor: I offer the carbon copy in evidence. (Handing same to counsel for respondent.)

Mr. Horton: I repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the same ruling will apply on this letter as on the previous letters marked for identification: and this letter will be marked "O" for identification. (Ex. 121.)

(The letter was thereupon marked "O" for identification.)

Q. (By Mr. Taylor) What is the paper now handed you?

295 A. This is a letter we received from the Andalusia Packing Company under date of August 17th, 1917.

Q. And that acknowledges receipt of a letter, does it not?

A. Yes, sir; it acknowledges receipt of J. W. Clarke Company letter of August 16th.

Q. Is that the same letter which is marked "O" for identification here?

A. Yes, sir.

Mr. Taylor: I offer the letter of the Andalusia Packing Company to J. W. Clarke Company of August 17th, 1917, in evidence. (Handing same to counsel for respondent.)

Mr. Horton: We repeat the objections heretofore urged.

Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 80.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit No. 80.)

Q. (By Mr. Taylor) What is the paper I now hand you? (Handing witness paper.)

A. Telegram we received from the Andalusia Packing

Company August 21st, 1917. When I say "we", I refer to the J. W. Clarke Company.

296 Q. And you refer to the J. W. Clarke Company in all cases in which you have said "we"?

A. Yes, sir.

Mr. Taylor: I offer the telegram in evidence. (Handing same to counsel for respondent.)

Mr. Horton: I repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 81.

(The telegram referred to was thereupon received as evidence, and marked Commission's Exhibit No. 81.)

Q. (By Mr. Taylor) What is the paper which I hand you, Mr. Miller?

A. It is the letter we received from the Andalusia Packing Company under date of August 21, 1917.

Mr. Taylor: I offer in evidence the letter of August 21, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: I repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 82.

297 (The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 82.)

Q. (By Mr. Taylor) What is the paper I hand you, Mr. Miller?

A. This is a letter we received from the Andalusia Packing Company under date of August 25th, 1917.

Mr. Taylor: I offer the letter in evidence of August 25th, 1917, from the Andalusia Packing Company to J. W. Clarke Company (handing same to counsel for respondent.)

Mr. Horton: We repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 83.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 83.)

Q. (By Mr. Taylor) What is this paper which I now hand you? (Handing witness paper.)

A. That is a telegram received from the Andalusia Packing Company, September 11th, 1917.

Q. Received by the J. W. Clarke Company?

A. Received by the J. W. Clarke Company; yes, sir.

Mr. Taylor: I offer in evidence the telegram of September 11th, 1917, from the Andalusia Packing Company to the
298 J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 84.

(The telegram referred to was thereupon received as evidence and marked Commission's Exhibit No. 84.)

Q. (By Mr. Taylor) What is this paper I now hand you? (Handing witness paper.)

A. This is a carbon copy of the letter that J. W. Clarke Company wrote the Andalusia Packing Company, September 12th, 1917.

Q. Written by the J. W. Clarke Company to the Andalusia Packing Company?

A. Yes, sir; I wrote it.

Mr. Taylor: I offer in evidence the carbon copy of the letter of September 12th, 1917, from the J. W. Clarke Company to the Andalusia Packing Company. (Handing letter to counsel for respondent.)

Mr. Horton: We repeat the objection heretofore urged.

Exam. Sadler: The same ruling on this letter as on the previous letters marked for identification; and this letter will be marked the letter "P" for identification.

299 (The letter was thereupon marked "P" for identification.) (Ex. 122.)

Q. By Mr. Taylor) What is the paper which I have handed you? (Handing witness paper.)

A. This is price list furnished the J. W. Clarke Company from the Andalusia Packing Company for September 8th, 1917.

Q. That is the price list prevailing on September 8th?

A. Yes, sir.

Q. And the Andalusia Packing Company sent that price list to the J. W. Clarke Company?

A. Yes, sir.

Mr. Taylor: I offer the price list in evidence. (Handing same to counsel for respondent.)

Q. (By Mr. Horton) This is the price list that prevailed for the week ending September 8th, 1917, is it not, Mr. Miller?

A. Yes, that is what it reads.

Mr. Horton: We object on the ground that it is not material to the issues in this case.

Exam. Sadler: The objection will be noted and the price list will be received as evidence and marked Commission's Exhibit No. 85.)

(The paper referred to was thereupon received as evidence and marked Commission's Exhibit 85.)

300 Q. (By Mr. Taylor) Mr. Miller, I hand you paper marked Commission's Exhibit "P" for identification, will you please read that over and state whether or not where you ask for price lists, you refer to the same character of price list, as the one which has been received in evidence as Commission's Exhibit No. 85? (Handing witness paper.)

A. I asked for a price list that would give us the selling price, including our commissions and freight; I was under the impression that this price list included that. We had some correspondence—or, there was some question as to whether that was the f.o.b Andalusia list or whether it was the Atlanta list, plus the freight.

Q. Had you been receiving price lists similar to this Exhibit 85?

A. Yes, sir.

Q. Up to the time of writing that letter of September 12th?

A. Yes, sir.

Q. How frequently did you receive these price lists—by "you" I mean the J. W. Clarke Company.

A. We received them practically every week; occasionally missed them.

Q. And what do these prices on here refer to? For
301 instance, we have pork loins 26. Is that 26½?

A. 26½, yes, sir.

Q. What does that mean, price of the last day, on the 8th of September, or the average price during the week?

A. Well, that means the price we were to sell them for the whole week. We received this price list the first of the week, it would have been about September 2nd.

Q. And that was proposed to be your sales instructions for the entire week?

A. Yes, sir.

Q. And you stated that you were to sell at the prices quoted there, is that your understanding?

A. Yes.

Q. Please state what this paper is (Handing witness another paper).

A. This is a letter that the J. W. Clarke Company received from the Andalusia Packing Company dated September 13th, 1917.

Mr. Taylor: I offer in evidence the letter of September 13th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew all the objections heretofore urged.

302 Exam. Sadler: The objections will be noted, and the letter received as evidence and marked Commission's Exhibit No. 86.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 86.)

Q. (By Mr. Taylor) What is the paper I show you, Mr. Miller?

A. This is carbon copy of a letter I wrote the Andalusia Packing Company under date of September 18th, 1917.

Q. You mean the J. W. Clarke Company, which you wrote as president?

A. Yes, sir.

Q. And general manager of the J. W. Clarke Company?

A. Yes, sir.

Mr. Taylor: I offer in evidence the carbon copy of the letter of September 18th, 1917, from the J. W. Clarke Company to the Andalusia Packing Company. (Handing letter to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The ruling will be the same on this letter as on the previous letters marked for identification; and this letter will be marked the letter "Q" for identification.

(The letter was thereupon marked "Q" for identificatification.) (Ex. 123.)

303 Q. (By Mr. Taylor) What is the paper I hand you, Mr. Miller?

A. This is a letter that the J. W. Clarke Company received from the Andalusia Packing Company dated September 21, 1917.

Mr. Taylor: I offer in evidence the letter of September 21st, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing letter to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 87.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit No. 87.)

Q. (By Mr. Taylor) Mr. Miller, referring again to this Exhibit No. 87, do you know whose initials those are, "G.D.R."?

A. I understand his name was G. D. Roberts.

Q. And are all of these letters from the Andalusia Packing Company about this period, having the initials G. D. R., does that all represent the same man, G. D. Roberts, as you know him?

A. Yes, sir.

Q. What is this paper I now show you? (Handing witness paper.)

304 A. This is a telegram that the J. W. Clarke Company received from the Andalusia Packing Company, September 19th, 1917.

Mr. Taylor: I offer in evidence the telegram of September 19th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company, (handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 88.

(The telegram referred to was thereupon received as evidence, and marked Commission's Exhibit 88.)

Q. (By Mr. Taylor) What is the paper which I show you, Mr. Miller?

A. This is a letter received by the J. W. Clarke Company from the Andalusia Packing Company dated September 22nd, 1917.

Q. And I call your attention to the fact that that letter acknowledges receipt of a certain letter from the J. W. Clarke Company. Can you state whether or not the letter referred to is the letter of September 18th, regarding which you have testified, and which is marked "Q", for identification?

A. Yes, that is a reply to it.

305 Mr. Taylor: I offer in evidence the letter of September 22nd, 1917, from the Andalusia Packing Company to

the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 89.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 89.)

Q. (By Mr. Taylor) What is this paper which I now hand you, Mr. Miller?

A. This is a carbon copy of a letter I wrote to the Andalusia Packing Company under date of September 22nd, 1917.

Q. And, how did you sign that letter?

A. Signed "J. W. Clarke Company, bu F. O. Miller, President and General Manager."

Mr. Taylor: I offer in evidence the carbon copy of the letter of September 22nd, 1917, from the J. W. Clarke Company to the Andalusia Packing Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat the objections heretofore urged.

Exam. Sadler: Same ruling will be on this letter as on 306 previous letters marked for identification; and this letter will be marked letter "R" for identification.

(The letter was thereupon marked "R" for identification.) (Ex. 124.)

Q. (By Mr. Taylor) What is the paper which I hand you, Mr. Miller?

A. This is copy of a letter I wrote the Andalusia Packing Company under date of September 24th, 1917.

Mr. Taylor: I offer the carbon copy of the letter dated September 24th, 1917, from the J. W. Clarke Company to the Andalusia Packing Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The ruling on this letter will be the same as on the previous letters marked for identification; and this letter will be marked the letter "S" for identification.

(The letter was thereupon marked the letter "S" for identification.) (Ex. 125.)

Q. (By Mr. Taylor) What is the paper which I show you, Mr. Miller?

A. That is a letter that the J. W. Clarke Company re-
307 ceived from the Andalusia Packing Company under date of September 25th, 1917.

Q. And that letter acknowledges receipt of a letter of the J. W. Clarke Company of September 22nd, does it not?

A. Yes, sir.

Q. Do you know to what letter that refers?

A. It refers to our letter of September 22nd.

Q. The one that is marked "R" for identification?

A. The one that is marked "R" for identification?

Mr. Taylor: I offer in evidence the letter of September 25th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 90.

(The letter referred to was thereupon marked Commission's Exhibit No. 90, and was received as evidence.)

Q. (By Mr. Taylor) What is the paper which I now show you?

A. This is a letter that the J. W. Clarke Company received from the Andalusia Packing Company dated September 29th, 1917.

Q. And that letters acknowledges receipt of a certain
308 letter from the J. W. Clarke Company?

A. Yes, under date of September 24th.

Q. Do you know what letter that is, can you identify that letter?

A. It is in answer to the letter marked "S" for identification.

Q. The carbon copy which has just been offered here?

A. Yes, sir.

Mr. Taylor: I offer in evidence the letter of September 29th from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 91.

(The letter referred to was thereupon received as evidence, and marked Commission's Exhibit No. 91.)

Q. (By Mr. Taylor) Mr. Miller, I call your attention again

to Commission's Exhibit 88, and will ask you whether or not the second word in the body of the telegram is a code word?

A. Yes.

Q. And above that word are two words in pencil, do you know whether those two words represent the code meaning of the word in the body of the telegram?

309 A. Yes, that is written out.

Q. And that telegrams, reading it and translating the code would be how?

A. "Answering, cannot ship this week, cannot supply local demand."

Q. Do you know how long that code has been in use?

A. For several years, that is the Cross code.

Q. And is it still in use?

A. Yes, it is still in use.

Q. Do you know how many years it has been?

A. It has been in use twenty years to my knowledge.

Q. Used generally by people in all lines of business or in certain lines?

A. Well it is principally packing house lines.

Q. Now, I show you another paper, what is that? (Handing witness a paper.)

A. This is a telegram received by the J. W. Clarke Company from the Andalusia Packing Company, dated October 4th, 1917.

Mr. Taylor: I offer in evidence the telegram of October 4th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

310 Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 92.

(The paper referred to was thereupon received as evidence and was marked Commission's Exhibit No. 92.)

Q. (By Mr. Taylor): And referring to Commission's Exhibit No. 92, will you make the same explanation as to the second word of the telegram that you gave in the preceding telegram, Exhibit 88?

A. This second word in this telegram is Cross code word "phosphor" and translated means "cannot ship."

Q. Do you know how long the Andalusia Packing Company was using that code?

A. No.
Q. Or when it began to use it?
A. I do not.
Q. And what is the paper I now hand you? (Handing witness paper.)
A. This is a letter that the J. W. Clarke Company wrote the Andalusia Packing Company under date of October 4th, 1917.
Q. Carbon copy of the letter?
311 A. Carbon copy.
Mr. Taylor: I offer in evidence the carbon copy of this letter. (Handing same to counsel for respondent.)
Mr. Horton: We repeat and renew the objections heretofore urged.
Exam. Sadler: The same ruling will be on this letter as on the previous letters marked for identification; and this letter will be marked letter "T" for identification.
(The letter was thereupon marked "T" for identification.) Ex. 126.
Q. (By Mr. Taylor): What is the paper I now hand you?
A. This is a telegram received by the J. W. Clarke Company from the Andalusia Packing Company dated October 8th, 1917.
Mr. Taylor: I offer in evidence the telegram referred to.
Mr. Horton: We repeat and renew the objections heretofore urged.
Exam. Sadler: The objections will be noted and the telegram will be received as evidence and marked Commission's Exhibit No. 93.
(The paper referred to was thereupon received as evidence and markd "Commission's Exhibit No. 93.")
Q. By Mr. Taylor): I call your attention again to Exhibit 93, the first word of that telegram is "Answering,"
312 do you know what that refers to? What it is answering? I also call your attention to paper marked "T" for identification, and will ask you to examine that. (Handing witness paper.)
A. This telegram is in answer to our letter of October 4th, and marked "T" for identification.
Q. What is the paper I now hand you? (Handing witness paper.)
A. This is a letter that the J. W. Clarke Company received from the Andalusia Packing Company dated October 12th, 1917.

Mr. Taylor: I offer in evidence the letter of October 12th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew our objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 94.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 94.)

Q. (By Mr. Taylor): Will you please state what the paper is that I hand you?

A. It is a carbon copy of a letter that the J. W. Clarke Company wrote the Andalusia Packing Company under
313 date of October 15th, 1917.

Q. Was that letter mailed to the Andalusia Packing Company?

A. Yes, sir.

Mr. Taylor: I offer in evidence the copy of the letter referred to. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The same ruling on this letter as on the previous letters marked for identification; this letter will be marked letter "U" for identification.

(The letter was thereupon marked "U" for identification. Ex. 127.

Q. (By Mr. Taylor): What is the paper which I now hand you? (Handing witness paper.)

A. This is a letter that the J. W. Clarke Company received from the Andalusia Packing Company dated October 15th, 1917.

Mr. Taylor: I offer in evidence the letter of October 15th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company, handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's
314 Exhibit No. 95.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 95.)

Q. (By Mr. Taylor): What is this paper, Mr. Miller, which I hand you? (Handing witness paper.)

A. This is a letter received by the J. W. Clarke Company from the Andalusia Packing Company under date of October 19th, 1917.

Mr. Taylor: I offer in evidence the letter of October 19th, 1917, from the Andalusia Packing Company to the J. W. Clarke Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 96.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 96.)

Q. (By Mr. Taylor): Will you please examine the paper which I now hand you and state what it is?

A. This is carbon copy of the letter the J. W. Clarke Company wrote to Andalusia Packing Company, dated October 23rd, 1917.

Q. And the original of that was mailed to the Anda-
315 lusia Packing Company?

A. Yes.

Mr. Taylor: I offer in evidence the carbon copy referred to. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The ruling on this letter as on previous letters marked for identification; and this letter will be marked "V" for identification.

(The letter was thereupon marked "V" for identification.)

Q. (By Mr. Taylor): What is the paper I hand you? (Handing witness paper.)

A. This is copy of a letter that the J. W. Clarke Company wrote the Andalusia Packing under date of October 23rd, 1917.

Q. And the original of that was mailed to the Andalusia Packing Company?

A. Yes, sir.

Mr. Taylor: I offer in evidence the copy referred to. (Handing same to counsel for respondent.)

Mr. Horton: We object and renew the objections heretofore urged.

316 Exam. Sadler: The same ruling on this letter as on previous letters marked for identification. The letter will be marked the letter "W" for identification.

(The letter was thereupon marked "W" for identification.) Ex. 129.

Q. (By Mr. Taylor): What is the paper which I now hand you, Mr. Miller?

A. It is carbon copy of a letter that the J. W. Clarke Company wrote the Andalusia Packing Company under date of October 23rd, 1917.

Q. And mailed the original to the Andalusia Packing Company?

A. Yes, sir.

Mr. Taylor: I offer the copy in evidence. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The same ruling on this letter as on previous letters marked for identification, and the letter will be marked the letter "X" for identification.

(The letter was thereupon marked "X" for identification.) Ex. 130.

Q. (By Mr. Taylor): What is the paper I now show you, Mr. Miller? (Handing witness paper.)

A. It is carbon copy of a letter which the J. W. Clarke Company wrote the Andalusia Packing Company under 317 date of October 24th, 1917.

Q. And mailed it to the Andalusia Packing Company?

A. Yes.

Mr. Taylor: I offer in evidence a copy of the letter dated October 24th, 1917, from the J. W. Clarke Company to the Andalusia Packing Company. (Handing same to counsel for respondent.)

Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The same ruling on this letter as on previous letters marked for identification; and the letter will be marked "Y" for identification.

(The letter was thereupon marked "Y" for identification.) Ex. 131.

Q. (By Mr. Taylor): What is the paper which I now hand you?

A. It is carbon copy of a letter that the J. W. Clarke Company wrote the Andalusia Packing Company under date of June 22nd, 1917.

Q. And mailed the original to the Andalusia Packing Company?

A. Yes, sir.

Mr. Taylor: I offer the copy in evidence. (Handing same to counsel for respondent.)

318 Mr. Horton: We repeat and renew the objections heretofore urged.

Exam. Sadler: The same ruling on this letter as on previous letters marked for identification; and this letter will be marked the letter "Z" for identification.

(The letter was thereupon marked "Z" for identification.) Ex. 132.

Q. (By Mr. Taylor): Mr. Miller, I now hand you copies of three letters of October 23rd, 1917, marked "V, W, and X" for identification; also the letter of October 24th, 1917, marked "Y" for identification, all being written by the J. W. Clarke Company to the Andalusia Packing Company, and ask you to read them over carefully and state as accurately as you can when you received the last shipment from the Andalusia Packing Company. (Handing witness papers.)

A. I think that this was the last car that we received from the Andalusia Packing Company, October 22nd, 1917.

Q. Have you any records from whence you can verify your recollection as to that, other than those letters?

A. No, sir.

Q. Where are your records, or the records of the J. W. Clarke Company?

A. Those old records of the J. W. Clarke Company have all been destroyed. They were stored in a warehouse

319 on Wall street, and the J. W. Clarke Company gave up the warehouse, and its old records have never been moved out.

Q. Have you searched for them?

A. Yes, sir. I went through the warehouse down there and was unable to find anything.

Q. Now, Mr. Miller, can you state about what the volume of your business was during any period just prior to October 22nd, the period about which you have just been testifying?

A. Well, in just a rough way, I haven't any records on it at all.

Q. What will you testify from your recollection?

A. Yes.

Q. Now, what is your best recollection as to the volume?

A. Well, we were getting only a small amount of stuff just prior to this date.

Q. Why were you getting only a small amount of stuff?
A. We were unable to get them to ship it.
Q. And back a year prior to that. What was your recollection as to the volume of business that you were then doing?
A. A year prior to that we were getting quite a lot of
320 products from down there.
Q. Well, please state as fully as you can what your recollection is as to the volume of business that you were transacting for the Andalusia Packing Company—state the average amount.
A. I should say off-hand anywhere from four to six thousand dollars a week.
Q. And what is that, the average amount or the actual amount for any given period?
A. Well, that is about what we were doing the year previous.
Q. The average throughout the year?
A. Yes, sir.
Q. About $6,000.00 a week.
Mr. Horton: No, he said from four to six thousand.
The Witness: From four to six.
Q. (By Mr. Taylor): From four to six thousand. What month would that year begin with?
A. My recollection is we began that account in August, 1916.
Q. Then, from August, 1916, to August, 1917, according to your best recollection, the volume of business would average about four to six thousand dollars a week?
A. Yes.
Mr. Taylor: Now, you may cross examine him, Mr. Horton.

321 *Cross-Examination.*

Q. (By Mr. Horton): Mr. Miller, you have been in the meat business quite a while?
A. Yes, sir.
Q. Well, you were in Atlanta here from 1913, was it?
A. Yes, sir.
Q. Now, do you know Armour & Company?
A. Yes, sir.
Q. Have they got a branch house here now?
A. Yes, sir.
Q. Did they have one in 1913?
A. Yes, sir.

Mr. Taylor: Mr. Examiner, I wish to object at this time to this line of examination, it is not proper cross examination and not within the scope of the direct examination, and has no bearing upon it. Of course if counsel for respondent desires at this time to make Mr. Miller his own witness and put him on to prove any facts outside of the scope of the direct examination I will not make any objection to it, because I realize that there will be perhaps considerable trouble and expense in getting him here again, to say nothing of taking Mr. Miller's time. We will be very glad to ac-
322 commodate counsel in that way.

Mr. Horton: Well, if the Examiner please, the witness is here to identify certain records and letters, and one thing and another, and his records have referred to competitors, the price that this competitor was making, the price that that competitor was getting; and one of the issues here is that competition was suppressed, and I submit that it is perfectly proper to cross examine this witness upon any of the issues; and furthermore, if I understand the matter correctly, it does not lie in the mouth of counsel for the Trade Commission to stand upon the strict rules of evidence in a case of this kind. I don't think it is the policy of the Trade Commission to cavil over such matters. It is a matter of putting it in the record and letting it speak for itself.

Mr. Taylor: All these letters, Mr. Examiner, written by the J. W. Clarke Company are still not in evidence, because of the objections of counsel for the respondent, and he is not in position to cross examine him as to those letters at the present time. We hope to get the originals of those letters and offer them through officers of the Andalusia Packing Company, and then he can cross examine the officers who identify them.

323 Exam. Sadler: The objection will be sustained. I wish to state that if counsel for the Respondent wishes to make Mr. Miller his witness, why I don't believe there would be any objection on the part of the counsel for the Commission.

Mr. Taylor: No objection whatever.

Exam. Sadler: The Examiner does not believe that the question asked by the Respondent's counsel is proper cross examination.

Mr. Horton: Do I understand that the Examiner will rule against me if I offer to show by the witness who these competitors are, who he was in competition with at any time

while he was selling the products of the Andalusia Packing Company?

Mr. Taylor: I wish to state, Mr. Examiner, in connection with the question of counsel for Respondent, that this witness has been asked no questions upon any of those subjects.

Exam. Sadler: It is the ruling of the Examiner that such questions would be outside the limits of the direct examination brought out by the Commission's counsel.

Mr. Horton: But, I suppose that reasonable minds might differ upon that proposition.

Exam. Sadler: Well, the Examiner rules that there wont be any argument on the question, and if counsel for the Respondent desires to take it up with the Commission he can do so later in his brief, when he appears before the Com-
324 mission.

Mr. Horton: Then, the effect of the Examiner's ruling is to deny me the right to question this witness upon the different concerns that he was in competition with? And to show what the competition was in this territory?

Exam. Sadler: If it was not brought out on direct examination, that would be my ruling.

Mr. Taylor: Only so far as cross examination is concerned.

Mr. Horton: I am not talking about what was or what was not brought out on direct examination. The Examiner must pass upon that question. I am asking point blank as to whether or not I may be allowed to cross examine this witness upon the question of competition in this territory, to show the concerns that were selling wholesale meats in the Atlanta territory.

Mr. Taylor: There is no disposition, Mr. Horton, to criticise you for objecting to those letters; I don't want you to get it in mind that there is, I have no desire whatever to criticise you, and do not criticise you, you are entirely within your rights, to make all the objections you have made.

Mr. Horton: If the Examiner is basing his ruling upon the fact that the letters were not in evidence, yet I submit that counsel for the Commission thinks that they will
325 be admitted in evidence when properly identified, and if it develops later that they are not admitted in evidence, and it further develops that my cross examination is based only upon the matters contained in those letters, then a motion to strike the testimony brought out in the cross examination would be in order.

Mr. Taylor: The originals of those letters will be subpoenaed, and when produced will be offered in evidence, and cross examination then will be proper to any subject referred to in the testimony of the witness producing them.

Mr. Horton: Will the Commission produce this witness for cross examination?

Mr. Taylor: They will subpoena the originals of these letters.

Mr. Horton: Will they produce this witness that I am cross examining as to these letters?

Mr. Taylor: No. This witness has not been examined as to competition.

Exam. Sadler: Counsel for the Respondent will be limited in his cross examination upon the testimony brought out on direct examination.

Mr. Horton: I submit that competition and competitors have been referred to upon direct examination.

326 Q. (By Mr. Horton.) Mr. Miller, was Armour & Company one of your competitors in Atlanta while you were representing the Andalusia Packing Company?

Mr. Taylor: That is objected to as not proper cross examination, of this witness, it being outside of the scope of the direct examination and new matter.

Exam. Sadler: The objection will be sustained.

Q. Was Morris & Company one of your competitors here while you were representing the Andalusia Packing Company?

Mr. Taylor: I object to that question on the same ground upon which I objected to the preceding question.

Exam. Sadler: The objection will be sustained.

Q. Was M. M. Stanaland one of your competitors here while you were representing the Andalusia Packing Company?

Mr. Taylor: I express and repeat the same objections to this question.

Exam. Sadler: The objection will be sustained.

Mr. Horton: Now, it is evident from the ruling of the Examiner that the Respondent is not going to be allowed to go into the question of competition in Atlanta territory, therefore I propose to state for the record what I propose to prove by this witness on examination, if the Respondent
327 had been allowed to pursue this line of inquiry.

Exam. Sadler: I would like to make a statement here, that, if the Respondent wants to make Mr. Miller his own

witness to bring out those facts, that it has not been brought out on the direct examination, and the Examiner rules that it would not be permissible on the cross examination at this time.

Mr. Taylor: And I will further state that if counsel for Respondent wishes to make Mr. Miller his own witness he may do so, and it will be without prejudice to his rights to disregard the testimony and move for the dismissal of the proceedings at the end of the Commission's case. In other words, that he shall be in no wise prejudiced by reason of having made Mr. Miller his witness at this time, except insofar as the testimony taken may affect the case, if it is actually used. The testimony may be disregarded as brought out.

Mr. Horton: What we propose to prove by the witness, that he was in competition in the Atlanta territory with the following concerns during the time he was handling the products of the Andalusia Packing Company: Armour & Company, Wilson & Company, and their predecessors, Schulzberger and Schwarzchilds, Morris & Company, Cudahy
328 Packing Company, Jacob Dole Packing Company, Kingan & Company, White Provision Company, M. M. Stanaland, C. P. Ozburn, W. A. Perkins, C. W. Wright, Cohen Brothers, or Max Cohen, and that all of the above concerns were handling both beef and products, and that they were in active competition with the witness in 1917 and '18. Further that the following concerns were handling what is known as Southern hogs or that is soft hogs. Armour & Company, White Provision Company, M. M. Stanaland, and Mitchell Brothers. And further, that at least a part of the time before referred to, the Statesboro Packing Company, the Waycross Packing Company, and Chipley Packing Company, all located in the South, were represented on the Atlantic market.

Q. (By Mr. Horton.) Mr. Miller, what was the condition of the market in the late summer and fall of 1917, as compared with the same period in 1916?

A. Just in what respect do you mean?

Q. With regard to demand, and the readiness with which sales were made.

A. Well there was more demand in 1917 than there was in 1916.

Q. Meat products were rather scarce at that time, were they not?

329 A. I don't know that they were scarce, but there was more demand on account of the Government work being done.

Q. Well, is it not true that the sales were made more readily, and that the supply was not so close upon demand?

A. Oh, I cannot say that it was. There seemed to be plenty of packing house products at that time.

Q. Is it not a fair statement to say that it was easier to sell goods?

A. Yes, sir.

Q. In 1917, than it was in 1916?

A. Yes, sir; there was more demand for it.

Q. And that was true generally all over the country, was it not?

A. Yes, sir.

Q. Now the figures that you have given of $4,000.00 to $6,000.00 per week average, what year was that?

A. That was from 1916, August, to August, 1917.

Q. And that is taken purely from your recollection?

A. Yes.

Q. And is your recollection clear, or is it a little bit hazy?

A. Well, it is not altogether clear, that is not far from the correct figures.

330 Q. Would a fair statement be that that is the best guess that you can make at it after all these years?

A. Yes, sir.

Redirect Examination.

Q. (By Mr. Taylor.) Mr. Miller it is quite fair to say that that is a guess or that it is an estimate from your recollection?

A. Well, it is an estimate. A guess and an estimate is about the same thing, as long as you haven't the exact figures.

Q. How do you estimate it?

A. Well, by figuring on the brokerage for one thing in connection with the number of consignments used, sold.

Q. Did you make a computation and figures, for the purpose of arriving at the estimate which you have expressed?

A. Yes, sir.

Q. And on what was that computation based?

A. I figured the average on the number of accounts, as

well as we had a record of, and estimated that those were approximately the same.

Q. And did you have an independent recollection of the amount of brokerage received?

A. Yes, in a general way.

331 Q. And did the two check out about the same?

A. Yes, sir.

Q. (By Mr. Horton.) Those figures included all packing house products?

A. Yes.

Q. Beef as well as pork?

A. Yes, sir.

Exam. Sadler: The witness will be excused.

(Witness excused.)

(Thereupon, at 5:40 o'clock P. M., the hearing was adjourned until 10:00 o'clock A. M., March 4th, 1921.)

332 W. A. GATLIN was called by the Commission as a witness at Atlanta, Georgia, on March 4, 1921, and having been duly sworn, testified in substance as follows:

(P. 418-429)

That he is engaged in the retail meat business in Atlanta under the trade name of Sanitary Market Company; that he sells fresh pork, beef, mutton, lamb, as well as cured meats, lard, etc.; that his weekly volume of business in fresh pork was about 4,000 pounds in 1916, and about 4,000 pounds in 1917 per week; that in May, 1915, he began dealing in what is known as soft or peanut-fed pork, which he purchased from Clark Company or Mr. Stanaland; that he handled this product continuously through the year 1915 and during the year 1916, and continued to buy this class of pork as long as Mr. Stanaland had it to sell; that during the Winter season, from October 1st until March 31st, about ninety per cent of the fresh pork he handled in 1916 and 1917 was soft or peanut-fed pork; that about ninety per cent of the cured pork products he handled during that period of time was Southern products; that at the present time about fifty per cent of the pork products handled is Southern pork purchased from Armour and some from the White Provision Company; that he now sometimes has trouble in securing Southern pork products; that there has always been about two (2) cents

333 difference between the price of Southern pork cuts and Western pork cuts with the exception of Southern fresh

pork hams which are usually about one (1) cent less than the Western fresh pork hams; that Southern cured hams and bacons were usually about four (4) cents cheaper than Western cured hams and bacons.

334 After Recess

2:00 o'clock P. M.

Exam. Sadler: The hearing will come to order.

F. A. LUCHSINGER, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Taylor): Mr. Luchsinger, are you here as the result of subpoena served upon you?

A. Yes, sir.

Q. Have you the subpoena with you?

A. Yes, sir. (Witness producing a paper.)

Q. This subpoena is addressed to you care of Swift & Company, Moultrie, Georgia, is that your present address?

A. No, sir.

Q. What is your present address?

A. 206 Buford Place, Macon, Georgia, Post Office Box 885, Macon, Georgia.

Q. And you received this subpoena there?

A. I received the subpoena in Macon, yes, sir.

Q. And came from Macon here, pursuant to the subpoena. This subpoena calls upon you to produce certain things here, among others: "customers' ledgers and shipping books,
335 containing records of sales of meat and meat products of Moultrie Packing Company from the date of its incorporation until January 1st, 1918; also copies of letters to the trade, including brokers and customers' circulars or otherwise announcing any change in the business policy, management, or ownership of the Moultrie Packing Company, between June 1st, 1917, and January 1st, 1918." Did you bring any of those with you?

A. I have no records at all in my possession.

Q. What is your present business, Mr. Luchsinger?

A. Packing business.

Q. You are in business independently for yourself in Macon?

A. Well, it is independelty, yes and no, it is on a salary and commission arrangement.

Q. Were you formerly employed by Swift & Company?

A. Yes.

Q. During what period?

A. Well, from about February, 1901, to September, 1919.

Q. And were you at the main office in Chicago during a part of that time or all of it or any of it?

A. About seven years in Chicago.

Q. Now, going back to the month of May, 1917, were you in Chicago at that time?

336 A. Yes, sir.

Q. Do you recall a meeting held in the directors' room of Swift & Company, the respondent, on the 4th floor of the building on Tuesday, May 22nd, 1917, at 9:15 A. M.?

A. At a meeting about that date, I presume so.

Q. I show you Commission's Exhibit 28, will you please look at that and tell me whether or not it refreshes your recollection of such a meeting, and whether you attended such a meeting. (Handing witness a paper.)

A. Yes, I attended this meeting.

Q. Now, I call your attention to the second paragraph on the second page, in which the suggestion is made affecting you. You are the same Luchsinger referred to in that paragraph, are you not?

A. Yes, sir.

Q. And what did you do as a result of the suggestion there made?

A. Well, that is pretty broad. In what respect?

Q. Did you go to Alabama—to Moultrie?

A. Yes, sir, I went to Moultrie.

Q. Did you receive any instructions other than those at that meeting before going?

A. Nothing in writing, just some conversation.

337 Q. And who was the conversation had with?

A. Various parties there interested.

Q. Any of the officers of the corporation of Swift & Company?

A. Possibly G. F. Swift, Jr.

Q. How about Mr. Carr, did you have any talk with him?

A. Not that I remember before I went down there.

Q. Mr. H. C. Carr, I refer to. Now, when did you go to Moultrie?

A. I left Chicago on the 13th of June, 1917.

Q. And arrive at Moultrie when?

A. On the 15th of June, 1917.
Q. Who paid your fare down there?
A. Swift & Company.
Q. Who was paying your salary at that time?
A. Swift & Company.
Q. Did you see Mr. Carr at Moultrie from time to time after that?
A. No, sir; Mr. Carr was never in Moultrie during my time there.
Q. How long did you continue to receive salary from Swift & Company, after going to Moultrie?
A. Well, I received salary from Swift & Company all the time I was at Moultrie. Part on the Chicago payroll
338 and part on the Moultrie payroll.
Q. So you received a salary from both Swift & Company and from the Moultrie Packing Company.
A. Yes.
Q. Now you say all the time that you were there, was that so up to the time that you left?
A. Well, I considered it Swift & Company.
Q. Pardon me. Complete that answer.
A. I considered it Swift & Company while I was there, it was all handled as the Moultrie Packing Company.
Q. You considered that you were an employee of Swift & Company, do you mean?
A. Yes, sir.
Q. Now, what did you do at Moultrie, when you first went down there?
A. Well if I had an idea of exactly what you mean.
Q. Did you take charge of the plant?
A. No, sir; I didn't take active charge of the plant, no, sir.
Q. What were the nature of your duties?
A. I looked after my recommendations on change in construction, and I looked after organizing the plant, organizing the office, organizing the sales force. In other words,
339 putting in a Swift & Company system throughout the plant.
Q. And what was the condition of the sales department or sales force, when you went there?
A. Well it depended practically entirely on brokers.
Q. Do you recall who the brokers were, and where they were located?
A. A few of them; yes. There was M. M. Stanaland, in Atlanta, and Sam T. Smith, of Jacksonville, and I am not so

sure but he was at Savannah, or whether it was Dixon. I think Dixon was at Savannah, I am not positive on that point. They also had a brokers in Birmingham, whose name I do not recall, and a few other people in the way of wholesale grocery houses, but I do not remember their names.

Q. Now, after you had been there for a time, did you decide to change the method of selling?

A. The only method that was changed was to sell through Swift's branch houses instead of brokers, and later to put on salesmen of our own to handle the nearby territory.

Q. Can you recall about when that was that you came to that decision?

A. Oh, I would say along in September or October.

Mr. Horton: Just a second. I object to when the de-
340 cision was reached. The question is as to when it was carried into effect.

The Witness: There really wasn't any specific time for any decision to be set. If I felt like it on a Monday or Tuesday, why we changed.

Q. (By Mr. Taylor): Will you look at the papers which I now hand you and state what that is?

A. This is an inquiry . . .

Q. Just this letter.

A. Well, it refers here to paragraph 23, page 10, I don't remember what it was. What questions they asked, it must have been from the Federal Trade Commission, of Washington.

Q. Is that a reply of yours?

A. Yes, sir, this is a reply of mine.

Q. Are those initials on there your initials?

A. Yes, sir.

Q. Placed there by you?

A. Yes.

Q. Now then will you please look over the ten pages preceding the letter which you have just referred to, and tell me whose signature is affixed to those pages?

A. C. H. Wallow.

341 Q. Do you know the handwriting of Mr. Wallow?

A. Yes.

Q. You have seen him write?

A. Yes.

Q. And you know that that is his signature?

A. Yes, sir.

Q. Do you know what the document is that the signature is affixed to?

A. Not without reading it all over.

Q. Did you see him working on it? See Mr. Wallow working on it?

A. Not that I recall. I might have. In fact, I didn't pay any attention to it; I took it over for him to make out, as I recall it. I might have looked it over with him too, but I cannot remember.

Mr. Taylor: I offer in evidence the Federal Trade Commission's food investigation special report, schedule B, consisting of 10 pages, signed by Mr. C. H. Wallow, which have been identified by the witness. (Handing paper to counsel for respondent.)

Mr. Horton: Respondent objects to the introduction of the document in question on the ground that it is not germane to the issue and at least a part or all of the information asked for pertaining to the period prior to the time it is alleged that the respondent had anything to do with the Moultrie Packing Company.

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Exam. Sadler: The objection will be noted.

Mr. Taylor: Mr. Examiner, in offering this document, I wish to state that there are certain notations appearing on various pages throughout the document which were added after the document left the hands of the Moultrie Packing Company, which it is not intended shall be considered a part of the exhibit. For instance, on the left-hand margin of page 2, there appear in black ink the words "Carded E. A. F.", immediately below this notation is one in red ink, on the last two lines of the page, there are certain other notations, part in black and part in red ink, which are not intended as included. Also at the upper right-hand corner on the second page there are certain initials which were not a part of the original paper. On page 4 are various notations in red and black ink, in the extreme left-hand margin, consisting largely of initials, and also near the upper right-hand side of the page are certain black ink initials over the word "Tob", all encircled in black ink, and none of these notations are intended as a part of the exhibit. On page 5, on the right-hand margin ap-

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pear two notations, one in black ink, encircled, one in red ink, encircled in red ink, neither of which is intended to be included or is included. On page 8, on the left-hand margin, a notation in red ink, and certain initials included in the red ink circles, are not included. The letter is not included in this offer.

Exam. Sadler: The special report will be received as evidence and marked Commission's Exhibit No. 97.

(The report was thereupon received as evidence, and was marked Commission's Exhibit No. 97.)

Q. (By Mr. Taylor): Now, Mr. Luchsinger, returning again to this letter of October 5th, 1917, I will ask you to read paragraph 23, page 10, of Exhibit 97, and tell me whether that is the paragraph to which that letter answers, to the best of your recollection? (Handing witness paper.)

A. This letter answers paragraph 23.

Q. And it was written by you in answer to that paragraph, and mailed to the Federal Trade Commission?

A. Yes, sir.

Mr. Taylor: I offer in evidence the letter of October 5th, 1917, written by the Moultrie Packing Company by Mr. Luchsinger to the Federal Trade Commission.

Mr. Horton: The same objection as to Exhibit No. 97.

344 Exam. Sadler: The objection will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 98.

(The letter referred to was thereupon received as evidence and was marked Commission's Exhibit No. 98.)

Q. (By Mr. Taylor): I show you (handing witness a paper)—will you please read that, and tell me what it is?

A. That is a letter written by me in response to paragraph 20, pages 10.

Q. I call your attention to page 10 of Exhibit 97, paragraph 20, and will ask you if that was written in answer to that paragraph?

A. Yes, sir.

Mr. Taylor: I offer in evidence the letter just identified by the witness.

Q. (By Mr. Taylor): Those are your initials, are they? "F. A. L.", attached to this letter?

A. Yes, sir.

Mr. Horton: The same objection.

Exam. Sadler: The objection will be noted and the letter received as evidence, and marked Commission's Exhibit No. 99.

(The letter referred to was thereupon received as evidence and marked Commission's Exhibit No. 99.)

Q. (By Mr. Taylor): Now, will you please state what this paper is that I now show you? (Handing witness paper.)

345 A. It is in answer to paragraph 19, page 10.

Q. And it is a letter written by you to the Federal Trade Commission?

A. To the Federal Trade Commission; yes, sir.
Q. And the initials attached thereto are your initials?
A. Yes, sir.
Q. And put there by you?
A. Yes, sir.
Q. And paragraph 19 or page 10, of Exhibit 97, is the paragraph referred to in the letter?
A. Yes, sir.
Mr. Taylor: I offer in evidence the letter just identified by the witness.
Mr. Horton: Same objections.
Exam. Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit No. 100.
(The letter referred to was received as evidence and marked Commission's Exhibit No. 100.)
Q. (By Mr. Taylor): I show you page 10 of certain papers, and will ask you whose name, if you know, is signed to that paper? (Handing witness paper.)
346 A. C. H. Wallow.
Q. And who is C. H. Wallow?
A. Who is he?
Q. Who was he at that time? On the 15th day of September, 1917?
A. He was secretary and treasurer.
Q. Of the Moultrie Packing Company?
A. Of the Moultrie Packing Company.
Q. And that is the same C. H. Wallow, whose name is signed to certain other papers that you have identified here today?
A. Yes, sir.
Q. Now, will you please look over these preceding pages and state whether you recall that report passing over your desk or through the office of the Moultrie Packing Company while you were there.
A. I don't remember; I might have seen this report, and maybe I did not. I do not recall it at the present time.
Q. Now, will you please look at the pages following page 10, and certain riders there, and tell me whether you identify them as being made in the office of the Moultrie Packing Company? They are on the Moultrie letter-head, are they not?
A. Yes, they are on the Moultrie letter-head.
Q. Can you identify them as the work of the Moul-
347 trie—of the office of the Moultrie Packing Company?
A. Yes, in view of the fact they are on Moultrie let-

ter-heads, otherwise I am not familiar with it. Right during the period in June and July I made several trips between Moultrie and Chicago, and was away a good deal, and possibly I seen them and possibly not.

Q. Now, I call your attention to a letter appearing here as page 24. (Handing witness paper.) Whose signature is attached to that, is affixed to that?

A. C. H. Wallow.

Q. The same C. H. Wallow whose signature appeared on page 10?

A. Yes, sir.

Q. (Handing witness paper): Now, I call your attention to page 26, and will ask you whose initials are affixed to that?

A. C. H. Wallow.

Q. And is that the handwriting of Mr. Wallow?

A. Yes, sir.

Q. And certain words are interlined in ink, in the last line, and the third line from the last line, is that also in Mr. Wallow's handwriting?

A. No.

Q. Do you know whose handwriting that is?

348 A. Yes; C. E. Hurst.

Q. Who was Mr. Hurst?

A. He was assistant to Mr. Wallow at that time.

Q. By that time, you mean February 20th, 1918?

A. Yes, sir; he was a former employee of the Macon Packing Company when we took it over.

Q. You mean Moultrie Packing Company?

A. Moultrie Packing Company.

Q. And by "we," you mean Swift &Company?

A. Yes.

Mr. Taylor: I offer in evidence the report just identified. (Handing same to counsel for respondent.)

Mr. Horton: We object to the introduction of this exhibit in evidence for the following reasons: First, that the report is not complete; second, that it has not been properly identified; and third, that it is not germane to the issues in this case relating for the most part to transactions that took place long before it is even alleged that respondent had anything to do with the Moultrie Packing Company.

Exam. Sadler: The objections will be noted and the report will be received as evidence and marked Commission's Exhibit No. 101.

349 (The document referred to was received as evidence and marked Commission's Exhibit 101.)

Mr. Taylor: Mr. Examiner, in offering this paper which appears here as received as Exhibit 101, I wish to state that there are also certain notations which are not intended to be included in the offer. On page 2, the right-hand margin are the letters "R. M. T." in black ink, incircled in a black ink circle, and in red certain other letters immediately beneath, on page 3, on the right-hand margin are two notations in red ink circles the notations themselves in red ink are not included. In page 4, on the right-hand margin there are certain notations in red ink, not included in the exhibit. On the right-hand margin on page 7, certain initials in black ink, encircled in black ink, immediately beneath them red ink notations are not included. On the left-hand margin of the page are also both initials and figures, and words in red and black ink, which are not included. On the upper part of page 8, near the left-hand upper corner, are certain initials in black ink, encircled in black ink circles, and in red ink, and encircled in red ink, which are not included. On the right-hand margin are certain initials in black ink, enclosed in black ink circles, which are not included, and red ink initials
350 immediately below the black ink circle, are not included.

Q (By Mr. Taylor): Mr. Luchsinger, I show you letter marked Commission's Exhibit No. 69, are those your initials which are signed to that letter?

A. Yes, sir.

Q. Do you remember signing that letter, and sending it?

A. Yes, sir.

Q. That letter is sent to Mr. Stanaland?

A. Stanaland.

Q. Do you recall whether Mr. Stanaland replied to that letter?

A. I don't remember offhand whether he did or not.

Q. I show you here a paper marked for identification "I". Will you please look at that paper and state whether or not that refreshes your recollection?

A. It does; we received this letter from Mr. Stanaland.

Q. You received the original letter of which this is a copy?

A. Yes.

Mr. Taylor: I now offer in evidence paper marked Commission's Exhibit "I" for identification. (Handing paper to counsel for respondent.)

Mr. Horton: We renew the objections heretofore urged as to Exhibit "I", marked "I" for identification.

351 Exam. Sadler: The letter heretofore marked "I" for identification, will now be received as evidence and marked Commission's Exhibit No. 102.

(The paper referred to was received as evidence and marked Commission's Exhibit No. 102.)

Mr. Taylor: Mr. Examiner, I will ask to withdraw Mr. Luchsinger for a moment as Mr. Smith is here with certain exhibits, pursuant to subpoena, which I would like to have introduced, and then recall Mr. Luchsinger, so that he may identify them.

Exam. Sadler: Any objection on the part of respondent?

Mr. Horton: No objection.

(The witness, Mr. E. A. Luchsinger, was thereupon withdrawn from the stand, to be recalled at a later time.)

T. A. SMITH, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Taylor): Mr. Smith, do you appear here pursuant to subpoena? at this time in this proceeding, Mr. Smith?

A. Yes.

Q. And what is your address?

A. Moultrie, Georgia.

Q. And what is your business?

352 A. I am a bookkeeper for Swift & Company, employed by Swift & Company.

Q. And are these subpoenas, pursuant to which you appear (Handing witness papers)?

A. Yes, sir.

Q. Now, one of these subpoenas calls for you to produce the following papers: "The following letters received by the Moultrie Packing Company from M. M. Stanaland, letter dated October 6th, 1917; letter dated October 13th, 1917; letter dated October 20th, 1917; letter dated October 25th, 1917; and letter dated January 20th, 1917." Did you produce those letters?

A. No, sir.

Q. Why?

A. I could find no record of them in our office?

Q. Could you find any letters received from M. M. Stanaland about this period?

A. No, sir.

Q. Did you find the copies of any letters written to Mr. Stanaland about this period by the Moultrie Packing Company?

A. No, sir.

Q. Has the Moultrie Packing Company any letter
353 files with Mr. Stanaland at all?

A. No, sir; none that I could find.

Q. Has the Moultrie Packing Company any letter files or Swift—by the Moultrie Packing Company I mean either the Moultrie Packing Company or Swift & Company—any files or correspondence about the period mentioned, with regard to these letters for the month of October, 1917—from January, 1917, to October, 1917?

A. None that I could find.

Q. Were you able to find any correspondence files with anybody covering that period?

A. No, sir.

Q. Do you know what has become of the files or of the letters?

A. I cannot say about these specific letters, but all correspondence received during that period has been destroyed.

Q. And down to what period has correspondence been destroyed?

A. Well, I cannot say exactly, different classes of correspondence, at different times, but I will say that we haven't any correspondence of that nature earlier than or older than about the middle of 1918.

Q. 1918?

A. Yes, sir.

354 Q. By correspondence of that nature, do you mean correspondence between brokers of the Moultrie Packing Company and the Moultrie Packing Company?

A. Brokers or customers.

Q. Brokers or customers either?

A. Yes, sir.

Q. As a matter of fact, you have had no brokers since that time, have you?

A. No, sir.

Q. So that you have no correspondence with any of the brokers of the Moultrie Packing Company—is that correct?

A. Yes, sir.

Q. Now, have you correspondence with your customers since the middle of 1918, down to the present time?

A. We have some.

Q. On what basis do you select what shall be destroyed and what shall be kept?

A. I am unable to say just on what basis.

Q. As a matter of fact, is some of it destroyed, and some of it kept?

A. It is all kept for a certain period.

Q. For how long a period?

355 A. I would say not over two years.

Q. Now, this correspondence with customers, that you are talking about or correspondence with everybody?

A. Well I would say customers and possibly some with others too.

Q. I just want to get at the facts here, Mr. Smith. And is it fair to say that you haven't any correspondence at all over two years old?

A. I would not say positively that they have not any.

Q. Is it fair to say that you have no correspondence with customers at all over two years old?

A. None that I know of.

Q. Is the correspondence with officers of the Chicago house or main house of Swift & Company, destroyed, or is that kept for a longer period?

A. I say that depends upon the judgment of the particular party handling it. Certain corespondence that he might receive, he would judge to be of no future value, and would destroy it, possibly at the time he received it and possibly at any later time.

Q. And he might keep that indefinitely if he considered it of value?

A. He might; yes, sir.

356 Q. So you would say that there is no fixed rule with regard to correspondence heads of Swift & Company?

A. None that I am familiar with.

Q. Now, this other subpoena calls for customers' ledgers or shipping books, containing records of sales of meat and meat products from the Moultrie Packing Company from the date of its incorporation to January 1st, 1918. Have you those records with you?

A. I have the customers' ledgers.

Q. And will you please produce them?

A. They are in that trunk. Do you wish to bring them over?

Q. Yes, if you please.

A. (Witness going to a large trunk and producing various books.)

Q. And these are the books here on the desk, and to the back of you now?

A. Yes, sir.

Q. The subpoena also calls for copies of letters to trade, including brokers and customers, circular and otherwise, announcing any change in the business policy, management, or ownership of the Moultrie Packing Company between June 1st, 1917, and January 1st, 1918. Did you find any such copies of letters or papers or circulars?

357 A. No, sir.

Q. You were unable to find them?

A. Yes, sir.

Q. Would these have been destroyed in the ordinary course, the same as the correspondence that you testified about?

A. I think so.

Mr. Taylor: I will ask to withdraw Mr. Smith for the present, and have Mr. Luchsinger resume.

Mr. Horton: No objection.

F. A. LUCHSINGER, was thereupon recalled, and testified further as follows:

Further Direct Examination.

Q. (By Mr. Taylor): Mr. Luchsinger, will you please look at this book which I hand you and state what it is?

A. (Witness examining book): I am not familiar with this. This starts with the plant in 1914, October 15th.

Q. What does it go to, the last entries you find?

A. This runs from November 30th—I am not familiar with that record at all; looks like distribution of general business.

Q. It appears to cover to the end of about January, 1915. I ask that the book be marked for identification.

Exam. Sadler: The book will be marked A-1 for iden-

358 tification.

(The book was thereupon marked "A-1" for identification.)

Q. (By Mr. Taylor): Mr. Luchsinger, do you recognize this book as one of the ledgers of the Moultrie Packing Company? (Handing witness book.)

A. I am not familiar with the ledger, it was out of my line of work. I would say this looks like it, from the accounts on there, I was familiar in that respect only.

Q. According to the best of your knowledge, that is one of the ledgers of the Moultrie Packing Company?

A. Yes, sir.

Mr. Taylor: May I ask that that be marked for identification.

Exam. Sadler: The ledger will be marked "A-2" for identification.

(The ledger was thereupon marked "a-2" for identification.)

Q. (By Mr. Taylor): Do you recognize the book which I now hand you, as one of the ledgers of the Moultrie Packing Company?

A. Only from the fact that it is marked that way, is all I know. It was before my time down there.

Q. Do you recognize the accounts there as accounts of customers of the Moultrie Packing Company?

A. Yes, sir.

Q. And that is the same character of books that was
359 kept there by the Moultrie Packing Company during the time that you were there?

A. No, I would not say that that was the same character of books, it was along the same line.

Q. In what respect would you say it differed?

A. Well, the make-up of the sheets, possibly some difference.

Q. Will you please point out the difference?

A. Well, I could not offhand, unless I had the other sheets here with me, that they are using there now, or after—of course does go to 1918, which was used during my time there.

Q. Do you recognize that as one of the accounts there during your time?

A. Yes; I recognize that, Dr. Rathe of the city there, H. H. are the initials, January 16th, 1918.

Q. Look it over generally, and see whether you can recognize that as the ledger, or one of the ledgers of the Moultrie Packing Company.

A. (Witness examining the book): Yes.

Mr. Taylor: I ask that that be marked for identification.

A. (Witnesing continuing): I will state this much, that I am not familiar with the ledgers at all, I just know that they came from there.

360 Q. You simply know this is one of the ledgers of the Moultrie Packing Company?

A. I can't say that of all of them, due to the fact that Mr. Smith brought them up here.

Exam. Sadler: The book will be marked for identification "A-3".

(The book was thereupon marked "A-3" for identification.)

Q. (By Mr. Taylor): Mr. Luchsinger, did you examine the remaining volume produced here by Mr. Smith, one—two—three—four—to nine?

A. Yes.

Q. And do you recognize them as ledgers of the Moultrie Packing Company?

A. Yes, sir.

Q. You recognized certain of the accounts as accounts that were kept between the Moultrie Packing Company and its customers during the time that you were there?

A. Yes, sir.

Mr. Taylor: I will ask that they all be marked for identification; all these nine books.

Exam. Sadler: If there is no objection to the books being marked for identification under the letters "a-4" to
361 "A-13" inclusive, they will be so marked.

(The books remaining were thereupon marked according to direction "A-4" to A-13" for identification.)

Mr. Taylor: You may cross-examine, Mr. Horton.

Mr. Horton: No cross-examination.

Exam. Sadler: The witness will be excused.)

(Witness excused.)

T. A. SMITH was thereupon recalled for further direct examination, and testified as follows:

Q. (By Mr. Taylor): You have not stated what your business was?

A. Yes.

Q. Do you recognize that as one of the ledgers of the Moultrie Packing Company—"A-13"?

A. I don't know whether I can say I do or not. It is what was turned over to me as being one of those ledgers.

Q. By whom was it turned over to you as being one of the ledgers?

A. It is said to be that by Mr. Wallow?

Q. Mr. Wallow stated that this was one of the ledgers?

A. Yes, sir.

Q. And Mr. Wallow was at that time connected with the Moultrie Packing Company in what way?

362 A. He was connected with Swift & Company as auditor.

Q. Auditor of Swift & Company?

A. Yes, sir.

Q. And was he in charge of the Moultrie Plant of Swift & Company?

A. He was in charge of the accounting work there.

Q. Accounting work of Swift & Company?

A. Yes, sir.

Q. Now, when was it that Mr. Wallow turned those books over to you as the ledgers of the Moultrie plant of Swift & Company or of the Moultrie Packing Company?

A. About the middle of December, 1917.

Q. And you have since that been keeping the books of the Moultrie Packing Company, or the Moultrie Packing Company branch of Swift & Company?

A. I have kept the general ledgers and have done some work on the customers' ledgers.

Q. Now, what is this book that is before you. Would you characterize that as customers' ledger or general ledger?

363 T. A. SMITH was called as a witness for the Commission at Atlanta, Georgia, on March 14, 1921, and having been duly sworn testified in substance as follows:

(pp. 459-522 inclusive).

(Quote verbatim from record—Page 447 to page 458, to the question—"Now what is this book which is before you? Would you characterize that as a Customers Ledger or General Ledger?")

Reading from the Customers Ledger, the Moultrie Packing Company had customers during the year 1916 and down to June, 1917 in 252 towns and villages of the State of Georgia, in 56 towns and villages in the state of Florida, and in 15 towns and villages in the State of Alabama. Also identified account with M. M. Stanland in Commission's Exhibit A 3 for identification, marked as "Commission's Exhibit 104 and 104 A" and also Commission's Exhibit 105.—showing sales to Swift & Co. durign 1917.

364 10:00 o'clock A. M., March 7th, 1921.

The hearing was resumed.

Exam. Sadler: Gentlemen, we are ready to resume.

C. W. HARRISON was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Haycraft): What is your business address, Mr. Harrison?

A. 216 Atlanta National Bank Building.

Q. What is your business?

A. I am employed by Swift & Company, district manager's office.

Q. Have you any title there?

A. None whatever.

Q. State briefly for the record just what your duties are, your functions in the office?

A. I am considered assistant to the district manager; my duties at present are handling correspondence in the office, visiting Swift & Company's branch houses in the Atlanta jurisdiction, as the representative of the district manager, and handling business matters on those occasions.

Q. How long have you been associated in that way with the district manager's office of Swift & Company?

365 A. Since August, 1917.

Q. Prior to that time, what had you been doing?

A. I was stenographer and clerk.

Q. In the same office?

A. In the same office.

Q. For how long a period?

A. Since November, 1914.

Q. So that since November, 1914, you have been continuously in the office of the district manager of Swift & Company here in Atlanta?

A. Yes, sir.

Q. Could you state for the record just what branches came within your jurisdiction, say about the time—say 1916 and 1917?

A. Yes sir; do you want me to do so?

Q. Yes.

A. Asheville, N. C., Atlanta, Ga., Augusta, Ga., Charles-

ton, S. C., Chattanooga, Tenn., Columbia, S. C., Columbus, Ga., Florence, S. C., Jacksonville, Fla., Macon, Ga., Knoxville, Tenn., Nashville, Tenn., Savannah, Ga., Spartanburg, S. C., Tampa, Fla., Valdosta, Ga.

Q. That would be six branch houses in Georgia and
366 two in Florida, would it not?

A. Six is correct.

Q. Now, has Swift & Company operated branches at all those places in Georgia and Florida continuously from that date to the present?

A. No sir.

Q. What are the exceptions?

A. There is no branch at Valdosta, Ga.

Q. When was that discontinued?

A. That was discontinued I think December 1st, 1918.

Q. Have there been any additions, have any other branches been opened in Georgia or Florida since that time?

A. There has been an addition at Miami, Fla.

Q. When was that established or opened up?

A. It was opened I think December, 1918.

Q. I show you a map of Georgia as gotten out by the United States Postoffice Department, and I will ask you to mark on there with a red pencil, the branches that you have indicated in the State of Georgia?

(The witness complied with this request of counsel).

Q. Now then, having this map before you, I would like to have you also indicate with a red pencil, as near as you
367 can, the approximate territory covered by each of those branches you have indicated on there; I don't want you to be exact, but I take it from your position in the district manager's office, you can give me approximately that information.

A. If you had told me that, I could have brought a map over here that shows you those territories; it is going to be mighty hard for me to get the dividing lines, I can give it to you approximately, but I won't say it is correct at all.

Q. Of course, in asking for this information as of 1916 and 1917, I only want it approximately, I am not particular about the exact lines.

A. I am not in a position to give it to you, I don't know, it would just be entirely guesswork; I couldn't give it to you for the present time accurately.

Q. But you think you could though by consulting the map that you have in your office?

A. For the present time, I couldn't for 1916 or 1917, I

don't know where the dividing lines come, I know there have been lots of changes, we change territories frequently.

Q. Well then, at each of these branches, did you have salesmen operating outside of the city proper?

A. Yes sir, we did.

368 Q. Take the Atlanta branch, how many salesmen did you have operating in the City of Atlanta?

A. I don't know, about eight.

Q. Unless I otherwise indicate, my questions now relate to that period of time during the years 1916 and 1917, as near as you can remember?

A. Well, I would say about five or six salesmen.

Q. Then, about that time, how many salesmen did you have operating outside the city of Atlanta?

A. About three or four.

Q. And as near as you can remember, about what territory did they cover, which roads did they go out on, and how far?

A. One salesman went north on the Southern Road to Toccoa and Tallulah Falls; another one went east on the Seaboard to Athens and Elberton; another one went east on the Georgia road, I don't know just how far, but to the dividing point from the territory of Augusta; another one went south on the Southern as far as Locust Grove, that is towards Macon; another one went south on the Central of Georgia road I think through Griffin; another one went south on the Atlanta & West Point Railroad to Newnan, as far as Newnan;

another one went west on the Southern, I don't know

369 how far; another one went west on the Seaboard, or west or northwest, the lines of the Southern and the Seaboard towards Birmingham; one travelled north on the N. C. & St. L. towards Chattanooga, and also the little Louisville & Nashville branch up there that branches off of Marietta, Woodstock, in that direction.

Q. Mr. Harrison, I notice that you have made a number of routes here, do I understand you to mean that each salesman covered each route?

A. Not necessarily, some of the larger ones they did, the smaller ones, the most sparsely settled routes, they would go out on one route and maybe circle and come back the other road.

Q. Now, take your branch house at Augusta, Ga., and give me an idea, first how many salesmen did you have operating in the city proper of Augusta at that time?

A. I don't know, in regard to 1916 and 1917, I don't know

except—I was simply a stenographer, and of course when reports from those branches came to the office, I opened them and pinned them together, I didn't check the reports at that time, I wasn't out on the road, and I wasn't familiar with the territories.

Q. When did you go on the road first?

370 A. August, 1917.

Q. Well, give us about August, 1917, your first recollection after that.

A. Well, I can't say about that, for this reason; the reason I was so well able to give you an answer on Atlanta was that I was in Atlanta all the time, and I am thoroughly familiar with the State of Georgia leading out, on the roads leading out of Atlanta, and all I know is that we were represented by given salesmen.

Q. At Augusta?

A. At Augusta, and each of our other branch houses; their names, their number and the route they travelled in 1916 and 1917, I am not in a position to say at all.

Q. You mean, would that be true of all other branches besides Atlanta, or would you have any independent recollection of some other branch?

A. About only one branch would I have an independent recollection, and that would be Columbus, Ga.

Q. Well, what is you recollection about Columbus?

A. Well, we had two or three salesmen travelling out of Columbus, one going north on the Central and Southern towards Atlanta, and I think the other took in Manches-

371 ter, and another one went east on the Central of Georgia towards Macon, the dividing line was about Butler, Ga.; another one went south on the Seabord in the direction of Buena Vista and Ellaville; one went over in Alabama, I don't know the name of the road, all I know is he went over there.

Q. Now, I notice from the position of these branches that they are very well scattered over the state; I will ask you whether or not Swift & Company at that time covered practically all the State with their salesmen in the sale of their goods?

A. Swift & Company covered practically all of the State through the medium of some sales representative.

Q. What do you mean by the medium of a sales representative?

A. If any portion of the State wasn't covered by salesmen from a branch house, they had brokerage arrangements with different concerns to market Swift & Company's products.

Q. At that time, were there any car routes operated in the State of Georgia?

A. I don't know.

Q. Now then, what products were sold by Swift & Company through those branches and through those salesmen that you have indicated?

372 A. Fresh beef, fresh pork, smoked pork, sausage, cooked hams, dried salt meat, pure lard, shortening or compound lard, cooking oils, produce.

Q. A full line?

A. Absolutely.

Q. I will ask you also to indicate on this map of Florida with a red pencil, the branches you operated there in 1916 and 1917.

(The witness complied with the foregoing request of counsel).

Q. Now then, can you state from your recollection as to the number of salesmen employed by those two branches at Jacksonville and Tampa?

A. In 1916 and 1917?

Q. In 1916 and 1917.

A. No sir.

Q. Do you remember whether or not there were salesmen employed at those branches?

A. I do; they had a corps of salesmen for the city and country territories, each branch house.

Q. Would you say the principal markets in the State of Florida were covered by Swift & Company's Salesmen in the same way in the sale of their goods?

373 A. What do you mean by principal markets, principal towns?

Q. Principal towns, yes sir.

A. They were.

Q. I note, by the way, that you did not have a branch house over towards Pensacola in the northwestern part of Florida; how was that territory covered?

A. Our Atlanta jurisdiction ended at the Apalachicola River, and I am not in a position to say.

Q. That would be in the Alabama territory?

A. Yes sir. Of course, I have heard that we had a branch in Pensacola, but I have no information to offer on that.

Q. That is what I wanted to get at. And the same products were sold through the branches in Florida that were sold through the branches in Georgia?

A. Yes sir.

Q. Now, you were served with a subpoena, Mr. Harrison, to produce certain records for this hearing; I will just read you that part of the subpoena which we require: Monthly statements showing the sales of meat and meat products by Swift & Company branches in Atlanta territory, during 1916, 1917, 1918 and 1919; have you produced those records?

A. No sir; I do have, however, the weekly records for 374 those years.

Q. For those years?

A. Yes sir.

Q. Will you produce those here now?

A. Here is 1918 and 19, and here is 1916 and 1917.

Q. Mr. Harrison, consulting the record which you have produced here in response to the subpoena, being weekly statements of the branch houses, will you state for the record the volume of fresh pork sold by the Augusta branch house the last week in January for the years 1916, 1917, 1918 and 1919.

A. 1916, 1917, 1918 and 1919, week of January 27th, 1916, you see the last week in January in some years was January 26th, and January 27th, and January 25th, and in 1919—you understand this is the last week in January.

Q. The question will show that.

A. 1916, 2,609 pounds; 1917, 1,883 pounds; 1918, 9,572 pounds; 1919, 7,666 pounds.

Q. Now, for the same period of time, will you state the volume of smoked meats sold through the Augusta, Ga., branch house?

A. 1916, 5,127 pounds; 1917, 5,198 pounds; 1918, 10,751 pounds; 1919, 12,348 pounds.

Q. Now, for the same period of time, please state the volume

375 C. W. HARRISON, called as a witness for the Commission at Atlanta, Georgia, on March 7, 1921, at 10 o'clock A. M., after having been duly sworn, testified in substance as follows:

(Quote testimony verbatim, Pages 523 to top of page 533). Abstract pp. 534-545, 584-631, 641-652, 657-713—inclusive.

That consulting the record which he had produced in response to the subpoena; namely, weekly statements of branch houses of Swift & Co. in his territory, stated for the record the volume of fresh pork, smoked meats, dry salt and bacon

meats and pure lard sold by the various branch houses operated by Swift & Co. in his territory (already enumerated) during the last week in the months of January, March, June and September during the years 1916, 1917, 1918 and 1919, which testimony by stipulation between counsel for Commission and respondent is omitted from the printed record.

Mr. Harrison testified that the volume of sales through Swift & Co. branch houses in 1916 were as follows:

Augusta, Ga., branch house	
Fresh pork	152,432 lbs.
Smoked meats	442,702 "
Dry salt & bacon meats	1,800,756 "
Pure lard	200,086 "
376 Atlanta, Ga., branch house, 1916	
Fresh pork	823,682
Smoked meats	327,698
Dry salt & bacon meats	1,235,264
Pure lard	488,603
Valdosta, Ga., branch house, 1916	
Fresh pork	none
Smoked meats	101,794
Dry salt & bacon meats	1,012,580
Pure lard	56,907
Macon, Ga., branch house, 1916	
Fresh pork	212,352
Smoked meats	353,925
Dry salt & bacon meats	2,474,363
Pure lard	186,760
Columbus, Ga., branch house, 1916	
Fresh pork	14,005
Smoked meats	95,661
Dry salt & bacon meats	936,875
Pure lard	85,305
377 Savannah, Ga., branch house, 1916.	
Fresh pork	158,355
Smoked meats	415,993
Dry salt & bacon meats	1,927,741
Pure lard	82,867
Jacksonville, Ga., branch house, 1916.	
Fresh pork	355,063
Smoked meats	1,101,489
Dry salt & bacon meats	2,064,885
Pure lard	224,874

Tampa, Fla., branch house, 1916.

Fresh pork	472,900
Smoked meats	1,185,547
Dry salt & bacon meats	756,333
Pure lard	175,093

378 W. C. VEREEN was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Taylor): Mr. Vereem, what is your full name?

A. William Coachman Vereem.

Q. And what is your business?

A. Why, I am President of the Moultrie Banking Company, President of the Moultrie Cotton Mills, and President of the Colquitt County Cooperage Company.

Q. You reside at Moultrie?

A. Moultrie, yes sir.

Q. You at one time were president of the Moultrie Packing Company, were you not?

A. Yes sir.

Q. And were one of the moving factors in the organization of that corporation, were you not?

A. Yes sir.

Q. Will you please state about when that was organized, and the circumstances which led up to its organization?

A. Well, early in the year 1913, the latter part of 1912, our farmers began to become greatly discouraged on account of the boll weevil, which they knew would soon reach
379 our territory; the business men of Moultrie knew that something was necessary to be done in order to offset such injuries as might come to our community through the boll weevil, so we commenced investigating the packing industry. A committee of three was appointed by our local Chamber of Commerce in the summer of 1913, to go out West to examine some of the packing plants. I was one of that committee. We went to several places out West, and went through the plants, and tried to get such information as we could. We came back home, and we advised our people to build this plant; so we went ahead, and raised some funds, and organized the Company known as the Moultrie Packing Company, and early in the year of 1914, we commenced the

erection of our plant; the plant was completed, and we began operations on December 14th, I think it was, in 1914.

Q. Now, is this book which I show you—

Q. (By Mr. Horton): Have you finished your statement, Mr. Vereem?

A. Of course, there is more that I can tell right along.

Q. I would like to have the witness continue his statement just along the same lines.

A. I could go right along up until the time of the sale
380 of the plant.

Q. (By Mr. Taylor): I think the witness has quite fully answered the question which was asked him, he has come down to the time the plant was constructed, and I now desire to have him identify the minute book of the corporation.

Q. (By Mr. Horton): Your answer is not complete, Mr. Vereem, if you think you have not answered the question fully, I think you have a right to continue your answer until it is complete. (The testimony was read).

Mr. Taylor: The witness has recited the circumstances down to the time of the organization of the corporation, which I submit fully answered the question.

Mr. Vereem: I had fully stated some of the reasons which caused us, I hadn't gone into that in detail on some of the things I had stated to Mr. Taylor.

Q. (By Mr. Taylor): If there are any other circumstances that you desire to recite that you think are pertinent, it would be entirely proper for you to state them?

A. I just wanted to state that it was not the desire of any of the stockholders of the Moultrie Packing Company to get jobs for themselves; they didn't go into this packing company because they didn't have enough work to do, they
381 did it merely for the benefit of the country, to try to benefit the country, that was the idea of the promoters of this plant, and our hope was that after we got the plant in successful operation, to be able to sell it to some of the other packers, to take the thing off of our hands and carry it along, and thereby benefit the country, and leave us free to carry on our usual vocations.

Q. Now, as I understand your statement, there were two or three things that you desired to accomplish; first, you desired to provide a market for the sale of the hogs of Georgia?

A. Yes sir.

Q. In this vicinity?

A. Yes sir.

Q. You desired to bring them to your community for the benefit of a successful plant?

A. Yes sir.

Q. You desired to secure for the benefit of the Georgians the opportunity of buying this cheaper pork and this peanut fed pork?

A. Well, I don't know that we thought very much about giving them cheaper pork at all, but we had never heard so much about the difference at that time between hard
382 pork and soft pork, we just considered ours as good as any.

Q. Anyway, you wanted to give them an opportunity to buy it?

A. Sure, yes sir.

Q. Now, do you recall this book which I now show you?

A. Yes, this is the minute book of the Moultrie Packing Company, this is a copy I believe of their application for charter, which was granted, and that is a copy of the charter.

Q. This book is marked "E, for identification," the book which was identified at our hearing in Chicago on February 9th; you recognize your signature to these various minutes?

A. Yes sir, that is my signature.

Q. And entries throughout the book? Now, Mr. Vereem, will you please come down to the time when you first had an interview with a representative of Swift & Company?

A. Yes sir. Mr. Hunter came to Moultrie in the spring of 1917, and came to the packing plant, and I happened to be in the office, and he introduced himself.

Q. Do you recall what he said?

A. My recollection now is that he merely introduced himself, and stated that he was with Swift & Company, and that he had been to Cuba on a vacation, and was on his way back, and had known of our plant at Moultrie, and wanted to
383 see it, he came by there to see what we were doing, and asked if we would allow him to go through the plant, and permission was given him.

Q. Did he say Swift & Company of Chicago?

A. I don't know; I don't remember whether he said of Chicago or not, he said Swift & Company, I don't remember whether he said of Chicago or not.

Q. That you understood to mean Swift & Company of Chicago?

A. I didn't know but one Swift & Company.

Q. You didn't know there was any other?

A. No sir. He went through the plant, and looked at it,

and he came out, and thanked me for the courtesy. And some time later, several weeks later, I was in Atlanta, I was stopping at the Piedmont Hotel with one of my sons, and we were sitting in the front room of the Piedmont one night, when Mr. Kallmon, I believe it is spelled m o n, Kallmon, who was a broker representing Swift & Company in Albany, whom I knew very well, came in and saw me and spoke to me, and told me that Mr. Hunter, of Swift & Company, who had seen our plant, was there, and would like to talk to me. I told him I would be glad to talk with him, and he brought him right up where we were sitting, and we all sat there
384 and talked; Mr. Hunter asked me if I would like to sell the Moultrie Packing Company, and I told him for some reasons that I would, for the reason that I was the active head of the plant, had no one to take my place, and that my time was fully occupied outside of the work that I was doing for the packing company, it was really breaking me down, and I would be glad to sell if I could sell out to some one who would carry it on and operate it. He said he wanted to try to make a sale to Swift & Company of the plant, and would take it up with them and let me hear from him later. I heard nothing from him for several weeks. On the 14th of May, 1917, at night, Mr. Hunter called me up over the long distance phone from Montgomery, Ala., and asked me if I could meet Mr. L. F. Swift, the President of Swift & Company, in Jacksonville on the next morning.

Q. That was Jacksonville, Fla.?

A. Yes sir, Jacksonville, Fla., the next morning. I told him that I could. I went to Jacksonville the next morning, and met Mr. Swift at the Windsor Hotel; we talked over matters for some little time, and I got a map of all that country, and showed him where we were getting our hogs from, and told him about the number that we had killed. He asked
385 me then what I would take for the plant. I offered to take $150.00 a share for my stock, I told him I would sell mine at that, and believed that I could buy all the rest of it for him at the same price. He said he couldn't give that much for it, and we discussed the matter for some little time, and he finally told me, he said: "I will give you $125.00 per share for that stock, if you will take it." I said that was not enough, and I told him about what we had been earning there, and he then remarked to me, he said: "Don't you believe if I were to go to Albany, Ga. or Valdosta, Ga., and tell them that I would put up a packing plant there twice as large as the Moultrie plant, that they would give me fifty or seventy-

five thousand dollars?'' I thought a moment, and I said: ''Yes, Mr. Swift, I believe they would,'' for the reason that I knew that Albany and Valdosta at that time were very, very anxious to have a packing plant. After some further conversation, I agreed to give Mr. Swift an option until the first of June on the stock that I owned personally in the Moultrie Packing Company, and I also agreed to try to buy up for him at the same price, the stock held by the others, by others; I gave him an option on it, and I went back to Moultrie, and called a meeting of our Board of Directors, and went
386 over the conversation with Mr. Swift, and they agreed to accept the $125.00 for their holdings, and I at once began, took up with each stockholder, and finally secured their consent to sell at $125.00 per share just before the first of June.

Q. Now, have you that option with you, Mr. Vereem?

A. I have, yes sir.

Q. Will you produce it.

(Paper handed to counsel by witness).

Q. This option appears on the sheet of the Hotel Windsor letterhead, Hotel Windsor, Jacksonville, Fla., and written on the reverse side in handwriting; was that option written in your presence?

A. Yes sir.

Q. By whom was it written?

A. Mr. L. F. Swift wrote that copy, and I wrote up another copy of that in my handwriting, and gave it to Mr. Swift.

Q. You signed both copies, and Mr. Swift did the same?

A. Yes sir.

Q. That is the signature on the bottom of this?

A. That is my signature, yes.

Q. At the bottom of this option which I exhibit to you?

387 A. Yes sir.

Q. Now, will you please read that option?

A. ''Jacksonville, May 15th, 1917. In consideration of cash in hand paid, I hereby give F. A. Hunter an option good until June 2nd, 1917, on my 125 shares of stock of the Moultrie Packing Company, at $125.00 per share, and agree if possible to get all other stockholders to sign up as soon as possible, and all to be signed in a week if possible; and in no event is F. A. Hunter bound in any way to act unless I get all stock outstanding, supposed to be about $97,000.00. Above subject to audit of books to said F. A. Hunter's satisfaction,

my impression being that the books show a profit of about $90,000.00. (Signed) W. C. Vereen."

Q. You signed that in Mr. Swift's presence?

A. Yes sir.

Q. I observe that that option runs to F. A. Hunter, and not to Mr. Swift?

A. Yes sir.

Q. Was there any explanation made to you as to that?

A. No sir, none at all, Mr. Hunter was the man that I had talked to.

Q. Mr. Hunter was the man who had first come to see
388 your plant?

A. Yes sir.

Q. And whom you had subsequently talked to in Atlanta?

A. Yes sir, and over the phone from Montgomery.

Q. Now, I observe that on the opposite side of this paper, appears the name H. J. Nelson, U. S. yards; what significance does that have?

A. Mr. Swift told me that if it became necessary to have any correspondence relative to this sale, to address Mr. H. J. Nelson, Swift & Company, Union Stockyards, Chicago, Ill.

Q. And who wrote that name on the back of the option?

A. Mr. Louis F. Swift.

Q. Now, subsequently did you get together the larger portion of this stock?

A. Yes sir.

Q. Do you recall at the present time how much there was of it, or whether there was any of it outstanding?

A. Why, at the time that Swift & Company paid this money over on the stock?

Q. Yes.

A. Yes, there was, I think, my recollection is that there was ten shares belonging to the estate of W. T. Vick, and
389 I think there was five shares belonging to W. P. and O. N. Sloan, and five shares belonging to C. W. Williams. Sloan and Williams had lost their stock certificates, and had to come into court and get an order of court to have new certificates issued; Vick died, and we had to wait until his administrator could sell the stock at public outcry, and I had an agreement with the administrator to take over the stock at $125.00, and at the administrator's sale, I bid in the stock, Vick's stock, at $125.00 per share.

Q. Now, all of this stock which you have gotten together,

that was all of the stock excepting these twenty shares, you think?

A. I think that was all.

Q. You sent it to some bank in Chicago, did you not?

A. Yes sir.

Q. Do you recall what bank?

A. I think it was the Fort Dearborn National Bank.

Q. What instructions, do you recall the instructions on which you sent that?

A. Well, I am not very clear on that; my recollection is though that Swift & Company would pay over the amount, $100.00 per share.

390 Q. $100.00.

A. $125.00 per share.

Q. And upon the payment of that amount?

A. To deliver the stock to them.

Q. The stock was to be delivered?

A. Yes sir.

Q. And was the money subsequently returned by the bank to you?

A. Yes sir

Q. Now, do you know if Swift & Company sent certain representatives down here to Moultrie about this time, either just before or just after the sale of the stock?

A. Just after, some little time after the sale of this stock, Swift & Company sent down Mr. Mathis, who audited the books; they also sent down an architect who looked over the ground with the idea of making arrangements to enlarge the plant.

Q. When did Mr. Wallow first come down?

A. This option was given the 15th of May, and my recollection is that Mr. Wallow came down early in June.

Q. And Mr. Luchsinger came about the same time?

A. Mr. Luchsinger came with him, they came together,

391 some two or three weeks before we delivered the plant.

Q. Now, I show you here Exhibit No. 57, which is a copy of the first two pages of Mr. Mathis' report to Swift & Company, I will ask you to read it over, and tell me whether or not you were not mistaken as to the exact time when Mr. Mathis came down to examine the records (exhibiting paper to witness)?

A. I see here Mr. Mathis makes this audit May 28th and 29th, 1917; it is possible it might have been at that time; the first option expired June 2nd.

Q. June 2nd, yes.

A. June 2nd, and I extended that option until July 1st, and it is possible that Mr. Mathis was there making that audit before the first option expired, that is possibly correct as to that.

Q. And is it your recollection now that Mr. Mathis did come down and make an audit?

A. Oh, yes, I know that.

Q. Make an examination and an inventory of the goods inventoried?

A. Yes sir.

Q. And of the entire plant before the transaction was actually closed and the stock was purchased by Swift &
392 Company?

A. Oh, yes, yes sir.

Q. This exhibit is simply the first two pages of Mr. Mathis' report, in evidence, the first two pages?

A. Yes sir.

Q. I now show you Exhibit No. 53, I will ask you if you recognize that paper (exhibiting paper to witness)?

A. This is the financial report, I think I have seen this report here, I recollect Mr. Hall's signature there.

Q. What is Mr. Hall's first name?

A. Roland M. Hall.

Q. And that is addressed to you?

A. Yes sir, I think this is a statement that was handed to me.

Q. It was prepared by Mr. Hall, and sent to you?

A. Yes sir.

Q. Who was Mr. Hall?

A. Mr. Hall was one of our bookkeepers, he was with us I suppose about nine or ten months before the plant was sold.

Q. Did he remain after the plant was sold, do you recall?

A. For awhile, not very long.

Q. You were pretty closely in touch with the business and affairs of the Moultrie Packing Company, were you not,
393 during the time preceding the sale of the stock?

A. Yes sir.

Q. And supervised pretty carefully about everything that was done there?

A. Well, I did not so far as the killing was concerned; I had entire control of the finances, and to a large extent I looked after the sales.

Q. Now, tell us the policy of the selling organization, and

how the selling organization was made up, and the way in which the sales were secured?

A. We had brokers in a number of places, Atlanta, Macon—

Q. As you go, please name the brokers if you can recall them at the present time?

A. Well now, in Atlanta, we first had the J. W. Clark Company; later on, we had M. M. Stanaland; in Macon, we had Mr. Deidrich, I have forgotton his initials now; in Jacksonville, Fla., we had a man named Sam Smith I believe it was; and in Savannah, I know the man well enough in Savannah, but I can't think of his name now.

Q. Was it Dixon?

A. Mr. Dixon in Savannah.

Q. Do you remember his first name, or his initials?

394 A. I think his name was George, that is my recollection, but I am not positive of that. And I don't recall the Augusta broker's name, we never did much business there, and we didn't do a great deal in Birmingham, and I have forgotten his name. We had brokers also in Waycross, Fitzgerald, Albany, and a few other smaller places, we took in other towns around us, I don't recall all their names now.

Q. Can you state where the bulk of your sales were made, or at least what territory the heaviest part of the sales were made?

A. Well, we sold more in Atlanta and Jacksonville, I expect, that we did any other places; we didn't have a great many outlets, and wherever we could find a place that would take it, we shoved it there.

Q. Now, you sold goods other than through brokers, didn't you?

A. Oh, yes, we sold some, yes sir, we sold some direct, we had mail orders and telephone sales, and then we sold quite a lot of stuff to some of the packers.

Q. Now, your mail order and telephone sales, what territory did you make those sales in?

395 A. Well, most of those sales were made to some near-by towns, and frequently we would make some sales to some of the packers' branch houses.

Q. Do you recall some of the nearby towns in which these sales were made?

A. Why, yes, Pelham, and we used to sell the Hand Trading Company a good deal of stuff at times, and numbers of the small towns around, we would sell them some things.

Q. Do you know whether the customers' ledgers kept by

the Moultrie Packing Company would contain the sales, those mail order sales?

A. Yes sir.

Q. So that they would show the towns in which the various sales were made?

A. They would show that, yes sir.

Q. In that event, I won't trouble you with the details any more, as we have gone over those, and read them into the record as being the towns in which such sales were made.

A. Yes sir.

Cross-Examination.

Q. (By Mr. Horton): Is the packing plant still running at Moultrie now, Mr. Vereen?

A. Yes sir.

396 Q. It is now operated as Swift & Company, is it not?

A. Yes sir.

Q. I was very much interested in your testimony with regard to the reasons for organizing your plant, the upbuilding of the community.

A. Yes sir.

Q. Will you kindly explain that, and go a little further, please?

A. Our reasons for organizing?

Q. Yes sir, and its connection with the farmers.

A. Well, we knew that something had to be done, the boll weevil was getting in there, the farmers were discouraged, land values were going down, most of us had what we had invested in that section, and we wanted to save it, and we believed by the establishment of a packing house, thereby opening up the market for live stock, that our farmers would go into the livestock business, and thereby not suffer any losses, that they would merely change from cotton to live stock to a considerable extent, and that diversification would bring increased prosperity to the country; and we believed that we were not mistaken, after the establishment of the packing house, the farmers were encouraged, business became bet-

397 ter, the farmers who had to borrow money in the spring of the year for their cotton chopping, they quit borrowing it, they would sell a hog or two and get that money; it benefited them in many ways. Many of our people, many of our stockholders at first disliked to sell the plant, because they were proud of it, they thought it was a home institution, but I told them it was a physical impossibility for me to

continue to head it, and that if we could get a satisfactory price we must sell it; so on that account they all agreed, everything was entirely harmonious, and we sold, and our people are proud that we made the sale to them, to Swift & Company. Swift & Company have done everything in their power to help the farmers in that section, they have given out bulls, high grade bulls to be used in that section to improve the livestock, and they have done the same way with chickens.

Mr. Taylor: I think this is outside of the direct examination.

Q. (By Mr. Horton): I think this is very interesting. Continue, please.

A. Swift & Company have done just as we expected them to do, they have increased the capacity of that plant, and
398 they have helped in every way to build up that community. No one there regrets the sale of the plant, we are all glad of it, they have brought good citizens there, and we would like to get in some more just like them.

Mr. Taylor: I move to strike out the last portion of the reply as outside of the scope of direct examination, and not properly elicited by any questions on cross-examination, and not responsive to the question, and a voluntary statement.

Exam. Sadler: The motion to strike will be noted.

Q. (By Mr. Horton) About what is the population of Moultrie, Mr. Vereem?

A. The 1910 census showed a population of about 6,800; the town has grown beyond the limit lines now, and about 8,000 is the actual population.

Q. Now?

A. Now, yes sir.

Q. And has it grown since 1916?

A. Oh, yes, it has grown very much. Did I say the 1910 Census?

Q. Yes sir.

A. I should have said the 1920 Census; the 1910
399 Census was I think 3,345, that is approximately what it was in 1910.

Q. And is that the principal city in the country immediately surrounding there for a radius of forty or fifty miles?

A. Well, not for forty or fifty miles; it is the largest town in Colquitt County, and we have, take for instance a number of towns near us, Valdosta is about forty miles from us, that is a little larger than Moultrie, Thomasville is a

little larger than Moultrie, and it is about 28 miles; Albany is about 38 to 9 miles west, and it is some larger than Moultrie; Tifton is a little smaller than Moultrie; Gamilla and Pelham and those towns are smaller than Moultrie.

Q. Well now, what about your railroad facilities for the past five or six years, Mr. Vereem?

A. Well, we have now, the A. B. & A. Railroad, the Georgia Northern Railroad, the Georgia & Florida Railroad and the Valdosta, Moultrie & Western Railroad at the present time, we have had those railroads, we had them when this packing plant was erected.

Q. Now, what are the principal industries of Moultrie and vicinity now, and what were they for the past six or seven or eight years back?

Mr. Taylor: Mr. Examiner, I object to this as not
400 being cross-examination.

Mr. Horton: I think it is pertinent.

Mr. Taylor: It is pertinent in a sense, the evidence you are seeking to elicit as such.

Exam. Sadler: The objection will be sustained.

Q. In your direct examination, you spoke about the farmers in the vicinity of Moultrie; what percentage of your industry is farming, about Moultrie?

A. Well, that is an agricultural country, we have comparatively few manufacturing industries in our town, there is a cotton mill there, and a cottonseed oil mill, and a grain elevator and a barrel factory, and a canning plant and things of that kind, but it is essentially an agricultural country; it formerly was, just thirty years ago it was almost an unbroken pine forest, the turpentine business and the saw-mill business though has practically disappeared now, they were some years ago the leading industries.

Q. Then I understand you to say that the basic industry is agriculture?

A. Yes sir.

Q. And the products and branches of agriculture?

A. Yes sir.

401 Q. Now, you spoke about diversifying the crops, just how did that help the farmers, please, Mr. Vereen.

A. Well, diversification is always better, because a man doesn't stake his all on one thing, if he plants everything in cotton, the seasons might be bad for cotton, it might be too wet, or the boll weevil would be bad, and consequently he would make an unsatisfactory crop, or even if he made a good crop, the price might be low; it is always better to diver-

sify, and not to put all the eggs in one basket, because if he missed on one thing, he would be likely to hit on another.

Q. And that has proved correct?

A. Yes sir, that has proved very beneficial.

Q. Now, prior to the time this packing plant was built, where was the nearest livestock market of any consequence?

A. I don't know hardly that I could tell you that, I don't know of any livestock market where a man could have sold a carload of hogs nearer than New Orleans; don't understand me to say that I am making that positive statement, that there was none, but I don't recall any that was nearer than that.

Q. They would have had to ship a considerable distance in any event?

402 A. Yes sir.

Q. And I take it from your report that little livestock was shipped out of that section—I mean

A. Yes sir, very.

Q. Now, has there been a continuous cash market there since the packing plant was erected?

A. Ever since that plant started in December, 1914, there has been an everyday cash market.

Q. (By Mr. Taylor) For hogs?

A. For hogs and cattle.

Q. (By Mr. Horton): Is the livestock, the hogs and cattle about Moultrie increasing now, or decreasing?

A. They have decreased I am told in the last two years; they were increasing steadily, when we opened that plant in 1914, right along through 1915 and 1916, and up until we sold it in July, 1917, there was a steady increase, and I think there was an increase also in 1918 and possibly 1919, after Swift & Company took it, but I am told that the last year or year and a half there has been a decrease, that is my information, and I think by talking to the farmers or riding through the country, you will find that out.

Q. To what do you ascribe that?

403 A. To the high price of cotton entirely; whenever the Southern farmer can get 40 cents a pound for cotton, he will quit anything else in the world to go to it.

Q. (By Mr. Taylor): What is he getting for cotton now, Mr. Vereem?

A. Well, if he sells any now, it is down to about 11 or 12 cents, some grades lower than that even.

Q. Do you think that will cause him to return to hog raising again?

A. To a certain extent; he will never quit cotton; there is a peculiarity about the Southern farmer, he can miss on cotton every year, but he will never quit it, he can fail on hogs this year, and he won't touch them next year, or any other crop, but he will stick to cotton all the time.

Q. You can't get them away from it?

A. You can't do it.

Q. (By Mr. Horton): Now, did you try to sell this plant to any other packers other than Swift & Company?

Mr. Taylor: I object to that, on the ground that it is not proper cross-examination; it is assuming a fact contrary to the evidence, it is very clear from what Mr. Vereem has stated, that he didn't even try to sell it to Swift & Company, Swift & Company's representative
404 came to him and made the first suggestion.

Exam Sadler: The objection will be noted.

Q. Answer, please.

A. Yes sir, we were anxious to sell, and had had the matter up with Wilson & Company, and we even sent a man to Chicago to see Wilson & Company, to try to sell it to them; we had the matter up with another concern, I don't know who, they were not packers, and I never did know who they represented, they never would give me the name, but it was some concern in Pittsburg.

Q. Now, what success were you having in the marketing of your goods along about the time you first met Mr. Hunter and up until the time you sold your plant and a little prior thereto?

A. Well, we were selling right along; we managed to handle everything that we killed.

Q. Did you find that there were some products that moved more readily than others?

A. Oh, yes.

Q. Were you having trouble in moving any of the products?

A. No particular trouble at all.

Q. Now, with what financial success did you operate the plant?

405 A. Well, when I made the deal with Mr. Swift, I stated to him that our undivided profits at that time were approximately $90,000.00.

Q. Do you think you would have continued at that rate?

Mr. Taylor: I object to that.

Exam Sadler: The objection will be noted.

Q. You may answer, Mr. Vereen?

A. Well, I couldn't tell about that, I was going to try mighty hard to do it, but I couldn't tell; the field of prophesy you know is a dangerous one.

Q. (By Mr. Taylor): Anyway, you didn't feel that you were handing Swift & Company a lemon, did you?

A. No sir, we thought they got value received.

Q. (By Mr. Horton): It was a satisfactory deal all around, wasn't it, Mr. Vereem?

A. All around, on every side.

Q. The relations were very pleasant?

A. Very pleasant, and have continued so up until this very time.

Q. It was handled in a very pleasant way, and both parties lived up to their agreement, is that it?

A. Yes.

406 Q. Without any trouble at all?

Yes sir.

Q. I have here the minute book of the Moultrie Packing Company, Exhibit No. E for identification, and I call your attention to the minutes of the meeting held July 14th, 1916, and I note the following: "The president called attention to the large number of the Board of Directors who during the past season had personally endorsed paper for money borrowed out of Moultrie aggregating as much as $210,000.00, that all this special paper had been paid with the exception of $25,000.00 not due." Did you endorse some of the company's paper personally?

A. Yes sir, I endorsed a whole lot of it.

Q. At times, the whole of the year?

A. Oh, yes, the whole year; I endorsed $200,000.00 in the Atlanta National Bank at one time, as well as other places, endorsing them all around, there were several of the directors always signed with me, not the whole Board, but there were six or eight of them who did.

Q. Did that enter into your reason for wanting to sell also?

A. Yes, of course that was one of the reasons.

Q. As I understand it, the directors were taking a

407 heavy financial responsibility?

A. Yes sir.

Q. And that they were not getting any additional compensation for that?

A. That is true.

Q. It was to help out the community?

A. Yes sir.

Q. And if things happened to go wrong, and there happened to be a big loss there—

Mr. Taylor: We object to that question and all this line of examination, on the ground that it calls for speculation.

Exam. Sadler: The objection will be noted.

Q. There would be a heavy financial responsibility resting upon the directors?

A. Yes sir.

Q. Up until the time you sold the plant, did you have a rising market or a falling market?

Mr. Taylor: We object to that.

Exam. Sadler: The objection will be noted.

Mr. Vereem: Why, at times, we did have falling markets, then again we had advancing markets; the year that we sold out, my recollection is that prices were advancing.

408 Q. Advancing?

A. In the year we sold out, 1917.

Q. And in taking your inventory about the time the plant was sold, you figured your product on hand at the market prices?

A. Yes sir, I presume we did.

Q. But is it not true that the general trend of prices for livestock, and consequently of the dressed product thereof, was rising from say 1914 up to 1917?

Mr. Taylor: I submit that this is not the proper way to prove market prices.

Mr. Horton: I am just fixing the general trend.

Mr. Taylor: It is not proper cross-examination.

Exam. Sadler: The objection will be noted.

Q. Answer the question, Mr. Vereem?

A. You mean that there was a rising market now from the time we started?

Q. I don't mean that it was a continuously rising market, but the general trend was upward, is that right or not?

A. Well, during 1915, my recollection is that the trend was not upward then, but that the upward trend came on later, and possibly in the latter part of 1915 and through 1916, I think the trend was upward then.

409 Q. Up about until the time you sold the plant?

A. Yes sir.

Q. Now, I also call your attention again to the minutes of the meeting of stockholders held on July 14th, 1916; the president—

Mr. Taylor: I wish at this time to object to the read-

ing into the record of a portion of the minutes which are not already in evidence, it is not the proper way to get them into the record, this being outside of the scope of the direct examination and therefore not properly cross-examination.

Exam. Sadler: The objection will be sustained.

Q. By reference to the minute book, and refreshing your memory, will you give us the substance of your recommendation to the stockholders at the meeting of July 14th, 1916, with regard to market conditions?

Mr. Taylor: I wish to object to the question; first, it has not been shown that it is necessary for the witness to refresh his recollection by examining anything; second, the question is not proper cross-examination, it is without the scope of the direct examination, and has no relation to it.

Exam. Sadler: The objection will be noted.

410 Mr. Vereen: Do you want me to explain this, about the exceptional season?

Q. Yes sir.

A. Well, it seemed, as stated in the minutes here, that we had bought on a low market, and the prices of our products had advanced, consequently we sold them at better prices than we would have been able to have done had the market just remained steady; I didn't want our stockholders to think that we could have such results all the time, sometimes it might be less profitable than it was at that time.

Q. Now, in your direct examination, you said that Swift & Company sent some men down to take an inventory, and an architect to look over the plant and make arrangements for enlarging it; has that plant been enlarged since that time?

A. Oh, yes sir.

Mr. Taylor: That is objected to as being outside of the scope of the direct examination.

Exam. Sadler: The objection will be noted.

Q. Broadly to what extent?

A. Why, the plant has been doubled or more, possibly more than doubled in capacity.

Redirect Examination.

Q. (By Mr. Taylor): Mr. Vereen, you remained a
411 stockholder and an officer of the corporation after the sale of the stock to Swift & Company, did you not, at least on the records of the corporation?

A. For a little while, yes sir.

Q. As I recall, there were five shares of stock standing in your name; do you know who was the beneficial owner of those five shares of stock?

A. No sir, I do not; that stock was issued in my name and sent to Moultrie, and I of course did like a great many dummy directors in a railroad company, I endorsed it in blank and sent it back.

Q. Sent it back?

A. Sent it back.

Q. From whence it came?

A. Yes sir.

Q. Where did you send it to?

A. Well, my recollection is that I delivered that stock to Mr. Luchsinger, that is my recollection.

Q. Do you recall how long it was you remained president of the corporation?

A. No sir, I am not positive as to that; I expect the minute book will show possibly.

412 Q. It was only a short time?

A. Only a short time, yes sir.

Q. During that time, did you perform any real duties, or were they just perfunctory?

A. No sir, only just for ten days or two weeks possibly after the plant was delivered over to Swift & Company, I signed checks for them until they arranged the power of attorney for some one to sign the checks, I signed the checks for them.

Q. You did nothing else?

A. Nothing else, no, I did nothing else.

Q. You spoke a little while ago, in answer to one of Mr. Horton's questions, about having some negotiations with someone in Pittsburg regarding the sale of this Moultrie Packing Company?

A. Yes sir.

Q. Where did those negotiations arise and have their inception, who did you see first?

A. I didn't see anybody with that Pittsburg concern, it was all by correspondence; nor do I recall who the parties were.

Q. You do not recall who the parties were?

A. No sir, it was, it seems to me it was some Pittsburg Steam Pipe Company, they said they had a friend of

413 theirs that was interested, but I don't know who it was.

Q. This pipe company wrote to you up here?

A. Yes sir.
Q. Wanting to know—
A. If we wanted to sell the plant.
Q. If you were willing to sell?
A. What we would take for it, and I told them what we would take for it, and it was less than we sold it for, that was sometime before, and they finally wrote back and said their friend was not interested.
Q. Sometime before, when your earnings had not been quite as satisfactory?
A. Not quite as large, it was some months before that, yes sir; and then we had it up with Wilson & Company, and in fact I sent a man to Chicago to see Mr. Wilson.
Q. When was this that you sent someone to Wilson & Company?
A. In 1917, the spring of 1917.
Q. Do you recall more exactly the date?
A. No sir, I couldn't tell you exactly the date it was.
Q. It was before Mr. Hunter had been to you, wasn't it?
A. Yes sir, it was before I had seen Mr. Hunter, and possibly, I don't know, we had some correspondence after
414 I saw Mr. Hunter, I think possibly we did, I am not sure as to my dates on that, though, I know it was along in the spring of 1917.

Recross Examination.

Q. (By Mr. Horton): Mr. Vereen, you said that Swift & Company had done several things to help build up the live-stock in the country, and you mentioned that they had put out thoroughbred bulls?
A. Yes sir.
Q. Has the same thing been done with hogs?

Mr. Taylor: I object to this cross-examination; it is outside of the scope of the direct examination, and the answer that counsel for the Respondent is now endeavoring to elaborate is fully beyond the scope of the examination.

Mr. Horton: I don't think counsel should discriminate, if he lets the bull in, he ought to let the boar in.
Mr. Taylor: I move to strike out the bull.
Exam. Sadler: The objection and the motion to strike will be noted.
Mr. Veeren: I am not positive about the hogs, but my

impression is that they have, but I am not positive as to that, I know they have about the bulls and about the chickens.

Mr. Taylor: I move to strike out the impression.

415 Exam. Sadler: The motion to strike will be noted.

Q. Have they done anything to educate the farmers how to feed their hogs?

A. Oh, yes.

Mr. Taylor: That is objected to also on the same ground.

Exam. Sadler: The objection will be noted.

Mr. Vereen: Yes, they have done a wonderful work in that line.

Mr. Taylor: I move to strike out that answer.

Exam. Sadler: The motion to strike will be noted.

Exam. Sadler: Gentlemen, we will take a recess at this point, until 2:00 o'clock.

(Whereupon, at 12:45 P. M. a recess was taken until 2:00 o'clock P. M.)

After Recess 2:00 P. M.

Exam. Sadler: Gentlemen, we are ready to resume now.

C. W. HARRISON was thereupon recalled as a witness, and having been previously sworn, testified as follows:

Direct Examination (continued).

Q. (By Mr. Haycraft): Mr. Harrison, referring again to your (See abstract after p. 533)

416 C. P. OZBURN, called as a witness for the Commission at Atlanta, Georgia, March 9, 1921, after having been duly sworn, testified in substance as follows: (pp. 632-640)

That he was engaged in the wholesale meat business during 1916 and 1917, and that he at present is engaged in the retail meat business; that he had bought pork cuts and other supplies of M. M. Stanaland and Mr. Miller, who was handling the Andalusia Packing Company products; that he began buying those products when they first began shipping into Atlanta, and discontinued buying from Mr. Stanaland when

he discontinued the handling of the Moultrie Packing Company on account and stopped buying from Mr. Miller when he discontinued handling the Andalusia Packing Company account some time in 1917 or 1918; that the products purchased from Mr. Miller were soft pork or Georgia pork products; that he usually paid from two (2) to four (4) cents less for soft pork products than he paid for Western pork products; that after Mr. Stanaland and Mr. Miller stopped handling these two accounts he began to buy soft Georgia pork products from Armour and Swift & Company, and that later Mr. Stanaland came in with the Tifton account and Mr. Clark with a Chipley account, and that he bought from both of them; that it was about thirty days after Mr. Stanaland discontinued the Moultrie account that Swift & Company began
shipping Moultrie products into Atlanta to their own
417 branch house, and that he then bought from that branch
house; that he can now buy Georgia pork products from one (1) to two (2) cents under the price on Western pork products.

That the differential between the price of Western pork and Georgia pork depended on the condition of the market, whether it was overstocked and the demand was not strong.

418 10:00 o'clock A. M., March 8th, 1921.

Met pursuant to adjournment.

Exam. Sadler: Gentlemen, we are ready to resume.

Mr. Taylor: Before we start to proceed, I would like to have marked, extracts from the minutes of the Moultrie Packing Company, or rather from the minute book of the Moultrie Packing Company and the Andalusia Packing Company, which were offered and received in evidence at our hearing in Chicago, at that time, it was stipulated that copies should be received for original, the copies not then being present, it was not possible to have them marked as exhibits; I now have copies which have been prepared and agreed to by counsel as correct copies of the original extracts from the minute books, and I ask that they be marked.

Mr. Horton: I object on the ground that it is immaterial, incompetent, and not pertaining to the issues; there is no objection upon the ground that they are copies.

Exam. Sadler: I think your objection stands when they are introduced.

Mr. Horton: I think so.

(The copies of extracts from the minutes referred to were marked "Exhibits 31 to 49" inclusive, and are forwarded herewith)

419 Mr. Taylor: At this time, I wish to again offer as exhibits the carbon copies of letters written to the Moultrie Packing Company, which have been heretofore presented and marked for identification, F, G, H, and J, it appearing from the testimony of Mr. Smith, who was served with a subpoena duces tecum to produce the originals of these letters, that the originals are no longer in existence, and cannot be produced.

Mr. Horton: I object, first on the ground that carbon copies of the alleged letters are incompetent and immaterial, they are not within the issue; second, upon the ground that the facts necessary to raise a presumption of their receipt by the Moultrie Packing Company have not been shown; and third, on the ground that they are not the best evidence; fourth, that it has not been shown that if they passed between the parties at all, they passed in the usual and ordinary course of business.

Exam. Sadler: The objection will be noted, the letters will be received as evidence and marked Commission's Exhibits 105, 106, 107 and 108 respectively.

(The carbon copies of letters referred to were thereupon marked "Commission's Exhibits 105, 106, 10 7and 108" and are forwarded herewith.)

420 Mr. Taylor: Mr. Examiner, on yesterday, while Mr. Harrison was on the witness stand, he made a voluntary statement, elicited by no question, with regard to conditions I believe it was at Columbus; in view of the fact that I anticipate some of these questions on cross-examination may be made appropo to that statement, I move that that statement be stricken out.

Exam. Sadler: Any objections?

Mr. Horton: I object to striking the statement out.

Mr. Taylor: It was a statement which was not made in response to any question whatever, but was a voluntary statement by the witness, the statement has no proper place in the record, it was a statement which did not lay any foundation for any cross-examination, and I move that it be stricken out.

Mr. Horton: So far, no cross-examination has been based upon that statement; the statement referred to, as I recall it, came from the witness as an explanation of some of the figures that he was then reading into the record.

Mr. Taylor: Such explanation should properly come, if at all, on cross-examination anyway.

Mr. Horton: It may be either on direct or cross.

421 Exam. Sadler: The motion to strike will be sustained.

Mr. Horton: We certainly take an exception to that.

Mr. Taylor: I have nothing further to offer at this time.

Mr. Horton: At this time, I would like to make the request that I be furnished with copies of the exhibits that have been introduced in the record at this hearing, and I will make the same request for subsequent hearings, if there is any way in which this can be done; I understand that the reporters are not going to make copies here, but are going to forward the original exhibits to the Commission, and if there is any reasonable expense involved, I at this time offer to pay it.

Exam. Sadler: I will state that when the hearing is over, and we return to Washington, I can give the exhibits to the stenographic force to have them copied, and then forwarded to you.

Mr. Horton: That will be satisfactory.

Mr. Taylor: I would suggest, to avoid the possibility of confusion and doubt in the matter, that Counsel for Respondent furnish a list of the copies which he has not already received and which he desires; and of course for that purpose he will have access to the originals.

Exam. Sadler: I was just going to state that Mr. Hor-

422 ton has some of the exhibits on hand I believe at the present time, if he would furnish a list of the ones that are missing, we could make copies of them and forward them to him.

Mr. Horton: I have no copies of any of the exhibits that have been introduced at the Atlanta hearing; I have copies of all the exhibits that were introduced at the Chicago hearing.

Exam. Sadler: So you just want them from Atlanta?

Mr. Horton: From Atlanta.

Exam. Sadler: All right.

Mr. Horton: That was what I requested.

C. W. HARRISON was thereupon recalled as witness, and having been previously sworn, testified as follows:

Cross-Examination (cont'd).

See abstract after page 533

423 Exam. Sadler: Gentlemen, this hearing will adjourn until March 9th, 1921, at 11:00 o'clock A. M., in Birmingham, Ala., at Section A, dining room, Tutwiler Hotel.

425 BEFORE THE FEDERAL TRADE COMMISSION.

Federal Trade Commission,
Petitioner,
vs.
Swift & Company,
Defendant.
} Docket No. 453.

Birmingham, Alabama, March 9, 1921, 11 o'clock A. M.

Before:

C. T. Sadler, Examiner.

Met Pursuant to Notice.

Appearances:

A. N. Taylor and D. F. Haycraft, care of Federal Trade Commission, Washington, D. C., appearing for the Federal Trade Commission.

Frank L. Horton, Chicago, Illinois, appearing for Swift & Company.

426 Birmingham, Alabama, March 9, 1921, 11 o'clock A. M.

Examiner Sadler: The hearing will come to order.

J. L. THWEATT, being first duly sworn, testified as follows:

Q. (By Mr. Taylor): What is your name?
A. J. L. Thweatt.
Q. And your address?
A. Andalusia.
Q. What is your occupation, Mr. Thweatt?
A. Plant manager for Swift & Company at Andalusia.
Q. For how long have you occupied that position?
A. Since October 13, 1919.
Q. And prior to that time what was your occupation?
A. Sales manager of the Atlanta, Georgia, branch house.
Q. For Swift & Company?
A. Yes, sir.
Q. For how long a time?
A. Effective January 15, 1916.
Q. For what period did you say you were sales manager for Swift & Company at the Atlanta branch house?
427 A. From January 15, 1916, to October 13, 1919.
Q. And before that time what was your occupation?
A. From April 1, 1915, to January 15, 1916, I was general

salesman for C. N. Lavery, Swift & Company's district manager at Atlanta, Georgia.

Q. For what period?

A. From April 1, 1915, to the 15th of January, 1916.

Q. Were you selling Swift & Company's products during that time?

A. I was.

Q. What territory did you travel over during that period?

A. Georgia, Florida, South Carolina, and a part of Tennessee, and to one point in North Carolina; Asheville.

Q. And prior to that time, what was your occupation?

A. I was sales manager for Swift & Company at Greenville, Mississippi from December 1, 1914—no. You are getting back into ancient history now. Wait one minute. From December 1, 1914, to April 1, 1916. I will go over the record again. From April 1, 1916, to January 15, 1917, and from January 15, 1917, to October 13, 1919.

Q. You mean up to October 13, 1919, and since that time you have been at Andalusia.

428 A. Since October 13, 1919; yes, sir.

Q. And prior to December 1, 1914, what was your occupation?

A. I was produce salesman for E. P. Allen, general manager of Swift & Company, with headquarters in Birmingham, back to June 1, 1911.

Q. From June 1, 1911, down to what time?

A. Down to December 1, 1913,—I mean 1914.

Q. What territory did you cover at that time?

A. I covered thirteen branch house points in Alabama, Mississippi and Tennessee.

Q. Is the E. P. Allen to whom you have referred the same Mr. Allen who is present this morning?

A. Yes, sir.

Q. Is he now general manager for Swift & Company?

A. District manager of branch houses for Swift & Company with headquarters in Birmingham.

Q. Are the thirteen branch houses you mentioned the same thirteen branch houses now covered by Mr. Allen's district at the present time?

A. I don't know. He may have more or less. I have not had access to what he is working now.

Q. During the time you were sales manager for Swift
429 & Company at Greenville, Mississippi, what territory, did you cover from December, 1914, to April 1, 1916?

A. The territory immediately connected, with Greenville

as the distributing center, east of the Mississippi River, with a radius of about forty miles, east of the river.

Q. Now, taking this period from April 1, 1916, to January 15, 1917, when you covered Georgia, Florida, South Carolina, and possibly other states, the states you mentioned, what class of trade did you sell to?

A. The term "general salesman" is slightly ambiguous there. It was my duty to work with the regular branch salesmen, calling on the general retail trade. I did not work singly, but I simply worked with the branch house salesmen in calling on the retail trade of the various branches.

Q. Mr. Thweatt, you were brought here pursuant to subpoena, were you not?

A. Yes, sir.

Q. Those subpoenas called for certain documents, and I will read from the subpoenas the documents called for; customers' ledgers, shipping books, containing records of sales of meat and meat products at the Andalusia Packing Company from date of beginning business until March
430 30, 1918; also all correspondence between Andalusia Packing Company and E. P. Allen between the dates of May 1, 1917, and March 30, 1918, relating to the competitive conditions in the sale of meat and meat products in the City of Birmingham, Alabama, and relating to the purchase of the Andalusia Packing Company by Swift & Company; and also the following list of leters written by J. W. Clark & Company to Andalusia Packing Company, to-wit, letter dated June 22, 1917, relating to the price of meat; letter dated July 12, 1917, re sale of Andalusia Packing Company; letter dated July 1, 1917, replying to letter of the 16th of July; letter of the 16th of July from Andalusia Packing Company; letter dated July 28, 1917, acknowledging receipt of letter from Andalusia Packing Company, dated July 25th; letter dated August 9, 1917, relating to meat prices, and lard; letter dated August 16, 1917, acknowledging receipt of telegram of the 13th of July from Andalusia Packing Company; letter dated July 12, 1917, re market conditions; letter dated September 18, 1917, acknowledging receipt of letter of September 13th from Andalusia Packing Company; letter dated September 22, 1917, ordering car of pork products; letter dated
September 24, 1917, acknowledging receipt of letter from
431 the Andalusia Packing Company of September 22, 1917; letter dated October 4, 1917, acknowledging receipt of telegram from the Andalusia Packing Company; letter dated October 15, 1917, replying to letter from Andalusia Packing

Company of October 12, 1917; letter dated October 23, 1917, acknowledging receipt of invoice of eighty-three pigs from the Andalusia Packing Company; letter dated October 23, 1917, relating to the arrival of the car of pigs referred to above; letter dated October 23, 1917, acknowledging receipt of letter from Andalusia Packing Company, dated October 15, 1917; letter dated October 24, 1917, giving the prices of pigs; general ledger of the Andalusia Packing Company; also consignments reports of said company, of meat and meat products sold through brokers; also journal of said company covering the sales of meat and meat products during the years of 1916, 1917, and 1918.

Now, take up the first letters from J. W. Clark Company, to the Andalusia Packing Company, which have been mentioned in detail. Have you produced those letters?

A. No, sir.

Q. Take up the correspondence between Andalusia
432 Packing Company to E. P. Allen Company; have you produced that correspondence?

A. No, sir.

Q. Why?

A. We failed to find it in the records at Andalusia.

Q. Was search made of the records for the purpose of finding all those letters and the correspondence referred to?

A. Yes.

Q. Are you satisfied that no such letters or correspondence are in the records or files of the Andalusia Packing Company?

A. Yes.

Q. Is it the custom of the Andalusia Packing Company to destroy its records or letters and correspondence?

A. I cannot state for the Andalusia Packing Company, but it is the custom of Swift & Company to destroy the out of date correspondence from one year to eighteen months old.

Q. And Swift & Company is in charge of the Andalusia Packing Company?

A. Yes.

Q. Would all this correspondence come within the class of correspondence which would be destroyed by Swift
433 & Company within the time you mentioned?

A. I cannot say.

Q. From one year to eighteen months?

A. I cannot say. I had nothing to do with that; I don't know.

Q. Are you satisfied that this correspondence has all been destroyed?

A. Yes, I am satisfied it is not in the plant. In our possession, I mean.

Q. Referring to the books; have you the general ledger here?

A. We have that section exhibited.

Q. Is this the general ledger which you have produced here?

A. Yes.

Mr. Taylor: I ask that the book be marked for identification. (The book referred to was marked for identification "Exhibit A-15.")

Q. Do you want to qualify that statement?

A. No, I do not know that I would. That is the general ledger. The general ledger would be the record on this business. I think that is the general ledger on this business.

The general ledger on all our operations would more
434 than fill the room full. One sheet is a complete record of that part of it.

Q. What do you mean by that statement?

A. I say that is the general ledger of this subject matter.

Q. Described in the subpoena?

A. Yes.

Q. Containg the records?

A. Yes.

Q. Have you produced either the customers' ledgers or the shipping books containing the records of the sales of meat and meat products to the Andalusia Packing Company from the beginning of busines until March 30, 1918?

A. Yes.

Q. Which have you produced?

A. I have produced both.

Q. Mr. Thweatt, is this volume which I show you here the ledger, the sales ledger, for the Atlanta business,—the customers' ledger, I believe you call it, for the Atlanta, Georgia, business?

A. The customers' ledger for their broker, J. W. Clark Company, Atlanta.

Q. This is it?

A. Yes.

435 Mr. Taylor: I ask that this be marked "Exhibit A-16" for identification.

(The same was marked "Exhibit A-16" for identification.)

Q. Is this the customers' ledger of Birmingham showing the account of Mr. E. P. Allen & Company?

A. Yes.

Mr. Taylor: I ask that it be marked for identification.

Examiner Sadler: The book will be marked letter "A-17" for identification.

(The same was marked "Exhibit A-17" for identification.)

Q. What is this book I now show you, Mr. Thweatt?

A. This is the customers' ledger.

Mr. Taylor: I ask that it be marked for identification.

Examiner Sadler: The book will be marked "A-18" for identification.

(The book was marked "Exhibit A-18" for identification.)

Q. Have you also produced the consignment reports of the Andalusia Packing Company of meat and meat products sold through brokers; and also the journal of the company, covering sales of meat and meat products during the years 1916, 1917 and 1918?

436 A. This is the consignment reports.

Mr. Taylor: I ask that it be marked for identification.

Examiner Sadler: It will be marked for identification, letter "A-19."

(The same was marked "Exhibit A-19" for identification.)

Q. Now what is the book which I now hand you?

A. It is the journal entry book from October 14, 1916, until—I could only be correct by saying it covers through August 4, 1917. That is the last date appearing.

Q. Do you see any other later or subsequent entries without dates?

A. Yes.

Q. Are there a number of the entries without dates, made subsequently on the pages,—that is, after the last entry which bears a date?

A. Yes.

Q. Is there a later journal; that is, a journal containing similar entries covering later dates?

A. Not to my knowledge. Here are sixteen individual sheets. These seem to be subsequent to this entry. I could not swear this is complete there.

Q. Subsequent to the entry of August 4, 1917, and these are antedated; is that what you mean?

A. No, it is not.

437 Q. What do you mean?

A. There are sixteen additional entries in the back of the book.

Q. All appearing after the page bearing date of August 4, 1917?
A. Yes.
Q. Do they appear numerically?
A. Yes.
Q. The numbers on the pages are running consecutively after the page No. 193, which is dated August 4, 1917, from 194 to 210, both inclusive?
A. Yes.
Q. And every page is filled. Every page is filled with entries excepting the last page?
A. Yes, sir.
Q. Which is about two-thirds full?
A. Yes.
Q. That is, from page 194 to 210?
A. Yes.
Mr. Taylor: I ask that it be marked for identification.
Examiner Sadler: It will be marked letter "A-20" for identification.
(The same was marked "Exhibit A-20" for identification.)
Mr. Taylor: You may cross-examine, Mr. Horton.

438 *Cross-Examination.*

Q. (By Mr. Horton): Mr. Thweatt, you have been subpoenaed and brought here, have you not?
A. Yes.
Q. When did you receive the subpoenas?
A. Thursday of last week. What was last Thursday? Thursday, March 3rd.
Q. Did you receive them both on that date?
A. No, sir.
Q. Did you receive on that date a letter from them pertaining to the customers' ledgers?
A. Yes.
Q. When was the other subpoena given to you, calling for the general ledger of the Andalusia Packing Company?
A. March 9th.
Q. That is today?
A. Yes, sir.
Q. Since you have been here in this room?
A. Yes.
Q. Is this the one that Mr. Haycraft wrote out and handed to you a short time ago here?
A. Yes.

Q. I will ask you if the description of the documents
439 ments to be produced is in writing?

A. Yes.

Q. And whether or not the rest of the subpoena appears to be in typewriting, except the name of the witness?

A. Yes.

Mr. Taylor: Which subpoena do you refer to?

Mr. Horton: To the one which was given him today in this room.

Q. Did you see Mr. Haycraft when he filled this out a short time ago?

A. Yes.

Q. Did you see him write in there the description of the documents to be produced?

A. I saw him writing.

Q. On the subpoena?

A. Yes.

Q. Would you have produced all these documents if you had not been subpoenaed?

A. No.

Q. Would you have produced any if you had not been subpoenaed?

A. No.

Q. You would not you say?

A. No.

440 Mr. Horton: Now, Mr. Examiner, I call your attention to the law.

Mr. Taylor: Just one moment. Are you through with the cross-examination, Mr. Horton? If so, I would like to ask a few questions in re-direct before presenting it to the examiner.

Mr. Horton: Go ahead.

Mr. Taylor: Is that all the cross-examination you want to make?

M. Horton: That is all now.

Redirect Examination.

Q. (By Mr. Taylor): Mr. Thweatt, you did receive a subpoena on March 3rd, as you have testified, calling upon you to produce the customers ledgers, and the shipping books, containing the records of the sales of meats and meat products of the Andalusia Packing Company, from the date of beginning business until March 30, 1918; also describing certain correspondence to be produced?

A. Yes.

Q. That you received that on March 3rd?

A. Yes.

441 Q. You produced and had here today, before you received this subsequent subpoena referred to by Mr. Horton, all the books which have been identified here, did you not?

A. No, I don't say I produced them until they were officially turned over to you.

Q. They were brought here to the room and laid on the table?

A. Yes.

Q. These sheets were taken out,—rather, these books were taken out of the box and laid upon the table and submitted for examination before the further subpoena was given to you, were they not?

A. Yes.

Q. Now, it was after the books were laid upon the table here that this subsequent subpoena was prepared at the request of Mr. Horton, was it not?

A. Yes.

Mr. Taylor: That is all.

The Witness: Prior to the opening of this meeting.

Q. Before the hearing was actually called to order?

A. Yes.

Mr. Taylor: That is all.

442 Mr. Horton: I respectfully beg to contradict counsel when he said the subpoena was made at my request. It was not so made.

Mr. Examiner, I call attention to the law: first, the Federal Trade Commission Act, Section 9, in which it states: "the commission shall have power to require the subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence."

I also call attention to the rules of the Federal Trade Commission, Section (in numerals) 7: which states in part:

"Subpoenas for the production of documentary (unless directed to issue by a commissioner upon upon his own motion) will issue only upon application in writing, which must be verified, and must specify as nearly as may be the documents desired, and the facts to be proved by them."

I respectfully submit that these subpoenas are invalid. I respectfully submit that counsel for the Federal Trade has been going about with blank subpoenas in his pocket
443 which have been signed by Victor Murdock, one of the members of the commission. I submit that the law contemplates no such use of this very powerful writ. I protest against the production of these documents. I object to their use in this proceeding as being in contravention of the Constitution of the United States, and a violation of the search and seizure act, and as being incompetent in evidence. I further state that Mr. Haycraft, one of the counsel for the Commission, filled out the name of the witness, and the description of the documents to be produced, in my presence in the case of the subpoence which calls for the general ledger and the journal. I also state it is a fact that the same thing was done with the subpoena which calls for the production of the customers' ledgers, in certain matters.

Mr. Haycraft: Mr. Examiner, in answer to the statement of counsel for the respondent, I desire to call his attention to the same rules he has read; in the first place, authority is given the commissioners to sign the subpoenas; in the next place, the commissioner may sign the subpoena upon his own motion. These subpoenas with which certain documents were called for, were furnished myself and Mr. Taylor by Commissioner Murdock, and which I suppose were prepared on his own motion. Mr. interpretation of the paragraph
444 which is read by Mr. Horton would be that if the respondent or its counsel desired to have subpoenas issued for witnesses to be examined, it would be necessary to present in writing to the commission a memorandum setting forth the nature of the evidence to be subpoenaed, and the names of the witnesses. His statement with regard to the subpoenas which we are using I think answers his objection. With regard to the subpoena prepared this morning by myself, I desire to state that the documents which have been identified by the witness, Mr. Thweatt, were produced by him, as he stated in the examination, in answer to the first subpoena which he received on March 3rd, and they were laid upon the table, and I personally examined every one with the exception of the general ledger which was tied up with the cord, and as I went to examine it, counsel for respondent requestted me not to do it, he did not think it was covered with the subpoena. Then I stated I would prepare a subpoena to cover it, and he answered that he did not know whether I

could or not. I thereupon prepared and served the subpoena and after I served it, being of the opinion that he might wish to make the same objection to the other two books, I asked if he wanted them included in another subpoena, and
445 thereupon I did include them in the second subpoena, so there would be no question in the minds of any of us, whether the documents were subpoenaed at this hearing.

Mr. Horton: I understand that you admit, Mr. Haycraft, that these subpoenas are blanks, signed by Commissioner Murdock?

Mr. Haycraft: Yes, I admit it is the custom of the commission since its inception.

Mr. Horton: We stand upon our constitutional rights, Mr. Examiner. We protest that these documents have not been properly subpoenaed; that they have been brought here on a void subpoena, and we object to the use of them.

The Examiner: The objections will be noted. Any other cross-examination, or redirect examination?

Mr. Taylor: In the subpoenas which have been referred to by counsel for respondent and by Mr. Haycraft, the names of the respondents, the number of the docket, the name of the examiner before whom the witness is required to appear, that the witness is required to appear at the instance of the Federal Trade Commission, in the particular proceeding, designating it by name, and also the date on which the subpoenas were signed, were all inserted before the subpoenas were signed by the commissioner. The only thing left
446 blank is the name of the witness, and the date of the particular place of the hearing, and the description of the documents to be produced.

Mr. Horton: I understand that applies on all the subpoenas so far served in this case?

Mr. Taylor: That is my understanding, it applies to all subpoenas which were signed in this case at all.

Mr. Haycraft: Some do not contain the name of the examiner.

Mr. Taylor: Perhaps a few were signed which do not contain the name of the examiner.

Mr. Horton: With the knowledge which has now come to the respondent, Mr. Examiner, we wish to extend our objection to all the subpoenas which have been used in the case, and all the documents which have been produced in pursuance of the subpoenas.

Mr. Haycraft: To correct a mistaken impression which

counsel seems to have, I will state there were a few subpoenas served in this case, which do not name all the witnesses, documents to be produced, and the place of hearing. It is manifestly impossible in a case of this kind to prepare a case in Washington before the subpoenas are submitted to the commissioners, where you would know the name of all the
447 witnesses and a full description of all the documents to be produced, and the place and time of each hearing.

Mr. Horton: I admit it might be inconvenient. I submit it is not impossible. I further submit that the law intends no such broad power to be given to counsel for the Commission.

Examiner Sadler: The objections will be noted.

Mr. Horton: Mr. Examiner, at this time I will further state that in any examination, direct, cross, or redirect, or otherwise, which we may make of any witness in all similar circumstances, from now to the time the record is closed that we shall do so without prejudice to our right to urge this objection at the proper time.

Examiner Sadler: Yes. The hearing will recess now until two o'clock this afternoon.

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448 Wednesday, March 9, 1921, 2:00 o'clock P. M.

Met pursuant to recess.

Examiner Sadler: The hearing will come to order.

Cross-Examination by Mr. Horton.

Q. Mr. Thweatt, you are not a bookkeeper, are you?
A. No sir.
Q. You have not kept the books that you have produced here?
No.
Q. Entries are not in your handwriting?
A. No.
Q. Were they made under your direction?
A. No.
Mr. Horton: That is all.
Examiner Sadler: Any further redirect?
Mr. Taylor: None at this time.
Examiner Sadler: The witness will be excused.
(Witness excused.)

449 EDGAR P. ALLEN called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name, Mr. Allen?
A. Edgar P. Allen.
Q. Where do you reside?
A. In Birmingham.
Q. What is your business?
A. Brokerage business.
Q. What kind of brokerage business?
A. Brokerage business, selling packing house products, and so on.
Q. How long have you been in this line of business?
A. Since 1913.
Mr. Horton: Since when?
A. 1913.
Q. (By Mr. Taylor): Mr. Allen, did you ever have any business dealings with the Andalusia Packing Company?
A. Yes sir.
Q. Will you state when that commenced?
450 A. In September, 1916, I think it was.
Q. What was the nature of those business transactions?
A. We were acting as broker for them on this market.
Q. When did you commence acting as broker?
A. In September, 1916.
Q. Do you know the exact date?
A. September 11th, I think was the date, approximately the right date; I dont know the exact date, either.
Q. Now, what kind of goods was the Andalusia Packing Company putting out at that time?
A. General line of packing house products.
Q. That included what?
A. That included fresh meat, products, pork and beef, cured products, cured pork products.
Q. Fresh meat?
A. Fresh pork products.
Q. Fresh meat, both pork and beef?
A. Yes.
Q. How long a time did you continue to act as broker for the Andalusia Packing Company?
A. Until September, 1917.

Q. Can you fix the time in September, 1917 when you
451 ceased acting as broker for the Andalusia Packing Company?

A. Well, we really sold some goods after that time, but it was the remainder of consigned stocks we had on hand; we closed the last out in December, 1917.

Q. Do you recollect when it was you received the last shipment from the Andalusia Packing Company?

A. No, I do not.

Q. Do you know the month?

A. I think it was in September, I am not positive of that.

Q. And about what time in September?

A. About the 20th, around the 20th.

Q. Now, can you state about the volume of business that you did for the Andalusia Packing Company during this period?

A. Well, we handled on an average of two cars per week, regularly, sometimes we would get three; we always got two or more.

Q. During all seasons of the year, do you mean, by that?

A. Yes sir.

Q. And on what basis did you handle this product?

A. It was five per cent commission on the fresh meats.

Q. Both pork and beef?

A. Yes, and three per cent on the cured meats, my recollection; I wont be positive on that.

452 Q. How about lard?

A. Three per cent, is my recollection on that.

Q. Now, will you please state for the record the arrangement under which you handled this; that is, was the product consigned to you, or were they shipped directly from the Andalusia house to the consumers? What was the arrangement? Please describe it.

A. When we first started in September, 1916, we would take orders for a carload, or as much as we could, up to twenty thousand pounds, and send those orders in to Andalusia to be shipped; they would get the orders out and ship them to us, consign them to us in Birmingham, and send invoices, and we would distribute them here. Beginning January 1st, they gave us open consignments; we carried the goods in stock and sold it ourselves, for their account, on their stationery, and collected for them. We did that practically all of the time.

Mr. Horton: Louder please, Mr. Allen, I cannot hear you.

A. And we would report to them daily, by sending them

a carbon copy of each invoice that was issued. These invoices were furnished by them, and we would also report daily the collections as we collected them. We would deposit the money in the Birmingham Trust & Savings Bank
453 here, and give them an itemized list of the collections, that is, the customers' name and the amount, together with a duplicate deposit slip, O.K.'d by the bank.

Q. And in whose account were these deposits made with the Birmingham Trust?

A. Andalusia Packing Company.

Q. And did this arrangement continue up to the time the Andalusia Packing Company ceased shipping meats to you?

A. Yes.

Q. How were your commissions paid?

A. Monthly.

Q. And have you a record of the commissions that you received from month to month during this period?

A. Yes.

Q. Have you that record with you?

A. Yes, I have it here.

Q. Can you state the amount of commissions you received, without referring to that record, or will that be necessary?

A. I would have to refer to the record.

Q. Now, referring to the record to refresh your mind, will you please state the amount of commissions you received from month to month, beginning with the first commission received, and when it was received, what period it was received for?

454 Mr. Horton: Just a minute, please, Mr. Allen. We object on the ground that it is incompetent and immaterial, not within the issues in this case; and further, that it throws no light upon any of the questions here at issue; there is no way in which these commissions can be checked by us to get at the volume, and if there was such a way, it would still be incompetent and immaterial.

Examiner Sadler: The objections will be noted.

A. September, 1916, $200.97; October, 1916, $486.28; November, 1916, $649.53; December, 1916, $825.08; January, 1917, $1295.32; February, 1917, $1591.12; March, 1917, $1294.09; April, 1917, $822.61; May, 1917, $811.43; June, 917, $864.67; July, 1917, $523.83; August, 1917, $703.61; September, 1917, $658.10; October, 1917, $291.01; November, 1917, $5.26; December, $45.31.

Q. That the last commission you received?

A. Yes.
Q. Now, take the—
A. (Interrupting): Do you want the total of that?
Q. Have you the total?
A. Yes.
Q. Will you please state it?
455 A. $11,068.23.
Q. Now, take the first payment, $200.97, September, 1916, what month's work did that represent?
A. September.
Q. Did that represent sales made in September, or goods received in September?
A. Sales made in September.
Q. Sales made in September; now, will that same statement hold good down to the end of the year?
A. Yes sir.
Mr. Horton: It is understood, is it, Mr. Examiner, that our objection goes to this entire line of testimony, that it is not necessary to repeat it each time?
Examiner Sadler: Yes, it will be understood.
Q. (By Mr. Taylor): Now, take the commission of January, 1917, $1295.32, did the change in arrangement that was made at that time make any difference in regard to what that commission was payable for?
A. It did not.
Q. Was there any time during this period when the commissions represented other than—earnings other than goods received by you from the Andalusia Packing Company in that month?
456 Mr. Horton: Read the question.
Mr. Taylor: My question was "received."
The Witness: You mean the question before this one?
Mr. Taylor: Please refer to that first question:
(Previous question and answer read)
Mr. Taylor: Well, we will change that to sold, change the word "received" to sold.
The Witness: Was there any different ararngements made, was the question?
Mr. Taylor: Read the question.
(Question read)
Mr. Taylor: Sold for instead of received from.
A. No.
Q. (By Mr. Taylor): Now, have you the records of the deposits that you made?
A. Yes sir.

Q. From time to time, that you referred to in your previous testimony?

A. Yes sir.

Q. You have with you here the bank book?

A. Yes sir.

Q. Is this the book which you have just handed to
457 me, Mr. Allen, the bank book of the Andalusia Packing Company, in which the deposits were made by you as stated?

A. Yes sir.

Q. And do all of these items of money entered in this book at the various times represent the amounts, the deposits made by you on the respective dates?

A. Yes sir.

Q. Shown, and this is a correct record of all the deposits made by you for the Andalusia Packing Company during the Period from September 11, 1916, to December 28, 1917?

A. Yes sir.

Mr. Horton: We object to counsel's question as leading.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I now offer in evidence the account of the Andalusia Packing Company with the Birmingham Trust & Savings Company, the book just identified by the witness.

Mr. Horton: We object upon the ground that it is incompetent, immaterial, irrelevant, not within the issues in this case, and further, I would like to—first, before I state my objection, I would like to cross-examine the witness, please, on this book.

Mr. Taylor: You may, I have no objection.

458 Q. (By Mr. Horton): Were these deposits made by you personally?

A. No.

Mr. Horton: We further object to the offer of the book on the ground that it has not been properly identified.

Examiner Sadler: The objections will be noted, and the book will be received in evidence, and marked "Commission's Exhibit No. 110."

(The book was received in evidence, and marked "Commission's Exhibit No. 110")

Q. (By Mr. Taylor): Now, Mr. Allen, have you the total of the deposits shown on this bank book, Commission's Exhibit No. 110?

A. Yes sir.

Q. And what do those deposits aggregate?
A. $268,699.72.
Q. Now, have you a record of the aggregate of products received from the Andalusia Packing Company during this period which you were representing them as broker, the tonnage?
A. No, I have not.
Mr. Horton: Mr. Taylor, by products do you mean the meat food products that he received?
Mr. Taylor: Yes, all of the meat products.
459 A. We have got a partial record that will give you an idea of what it is, but not all of it.
Q. (By Mr. Taylor): What period does that partial record cover; is it complete for any given period of time?
A. It is complete as far as fresh meats are concerned, absolutely, from January 1st on.
Q. By fresh meats, just what do you include?
A. That is pork products, and beef and pork products, the fresh cuts.
Q. What does it show as to those products?
A. 682,733 pounds.
Mr. Horton: We object to that question and move to strike out the answer for the reason that it is incompetent, immaterial and irrelevant, not within the issues, and also because the record is not complete; that is, to throw any light on the case, it should be complete.
Examiner Sadler: The objection and the motion to strike will be noted.
Q. What was that amount again, please?
A. 682,733 pounds.
Q. Have you made a search for your records as to the other kinds of meat?
460 A. Yes sir.
Q. And with what results?
A. I could not find them.
Q. Now, what period of time was covered during the time during which you received this 682,733 pounds of fresh meats?
Mr. Horton: Just a minute, it is understood, is it, Mr. Examiner, that our objection goes to this entire line of testimony?
Examiner Sadler: Yes.
A. That was from January 1st, 1917, until we discontinued doing business with them.
Examiner Sadler: What are your initials, Mr. Allen?
A. E. P.

Examiner Sadler: And the address?

A. 2315 First Avenue.

Q. (By Mr. Taylor): Now, Mr. Allen, during the time you were representing the Andalusia Packing Company, did you yourself canvas the market here and make sales of produce?

A. Yes.

Q. Meat products, I mean?

A. Yes.

Q. The products of the Andalusia Packing Company?

461 A. Yes.

Q. Now, during that period of time did you yourself canvas the trade here?

A. Well, the whole time, every day.

Q. Do you know whether anybody else, aside from yourself, was selling the Andalusia meat products in this market, of Birmingham?

A. For what period?

Q. During the period from September 11th, 1916 that is the time when you started, up to the time when you stopped?

A. There was the latter part of the time, yes sir.

Q. Now, take the early part of the time, before anybody else—by the way, when was it that salesmen came into the market representing the Andalusia meat products, that is, selling them?

A. Why, it was in September, is my best recollection on that.

Q .September of 1917?

A. '17, yes.

Q. And who was it?

A. Swift & Company.

Q. Through the branch house here?

A. Branch house.

462 Q. Now, take the period prior to September, 1917, from September, 1916, down to September, 1917, do you know whether the representatives of Swift & Company were selling anything in this market?

A. Do not.

Q. Do you know whether they were working this market?

A. Yes.

Q. Were they?

A. They were working it, yes.

Q. Do you know what they were trying to sell in the market?

A. They were selling a general packing house line of products.

Q. Would that include all of the products which were produced by the Andalusia Packing Company?

A. Yes, and a great many more, I expect.

Q. Now, you went into meat markets from time to time, did you not?

A. Yes sir.

Q. Do the meats bear any marks indicating by whom they were sold, or from what packing house they come?

A. Yes, you can—when they come in the original package it does.

Q. Did you observe any meats there that were sold
463 by representatives of Smith & Company—Swift & Company?

A. Did I observe any of Swift's meats?

Q. Yes?

A. Yes.

Q. That is from September, 1916, down to September, 1917?

A. Yes.

Q. Were they the same character of meats that were produced by the Andalusia Packing Company, the same kinds of meats, the same sort?

A. Yes sir.

Q. Same sort of meats that you were selling?

A. Yes.

Q. As representative of the Andalusia Packing Company?

A. Yes sir.

Q. Now, take the time from September, 1917, right to the end of the time when you represented the Andalusia Packing Company, did you observe from time to time that the salesmen of Swift & Company were in the Birmingham market selling meats?

A. Yes sir.

Q. And what did you learn in regard to that, what kind of meats, what character were they?

A. Of the same character that they had been selling,
464 of the same kind, rather; as to the character, we found that they were selling the Andalusia Packing Company meats, goods packed in their boxes.

Q. And up to that time you had had sole representation and sale of the Andalusia Packing Company meats in this market?

A. Yes.

Q. And did you find that they were selling them to your customers?

A. Yes.

Mr. Horton: Now, we move to strike out the answer.

Mr. Taylor: Well, I will withdraw the answer, consent that the answer—I withdraw the question, and consent that the answer be stricken out.

Mr. Horton: Thank you.

Q. (By Mr. Taylor): Did you observe to whom salesmen of Swift & Company were selling Andalusia meat products?

A. Yes.

Q. Will you state generally who they were?

A. Why, they sold them to practically all of our customers; they worked the same class of trade.

Mr. Horton: I move to strike out the answer, if you please.

Mr. Taylor: I can see no reason why that answer 465 should be stricken out.

Mr. Horton: The question of ownership or title to any customer has not been shown before.

Mr. Taylor: We will develop from the witness exactly what he means by "our customers."

The Witness: Customers to whom we sold.

Examiner Sadler: The motion to strike will be noted.

Q. (By Mr. Taylor): Will you please state just what you mean by "our customers"?

A. Customers to whom we sold goods.

Q. By "we' who do you mean?

A. E. P. Allen & Company, as brokers for the Andalusia Packing Company.

Q. What is your recollection as to the month of October, 1917, with regard to the amount of sales you were able to make—no, I withdraw that question.

Mr. Horton: I am glad of it, I was going to object to it.

Q. (By Mr. Taylor): Now, Mr. Allen, have you ever been down to the office of the Andalusia Packing Company?

A. Yes sir.

Q. When did you first go there?

A. In July, 1916, was my first trip there, the latter part of July. I don't remember the date.

466 Q. Why did you go out there?

A. Why?

Q. Yes?

A. To see them with reference to representing them in the Birmingham market.

Q. Whom did you see there?
A. Mr. Henderson and Mr. Conner.
Q. Did you know Mr. Henderson's full name?
A. T. E. Henderson is his initials.
Q. What was his relation to the Andalusia Packing Company?
A. He was president of it.
Q. And do you know Mr. Conner's full name?
A. No, I do not.
Q. What was Mr. Conner's relation to it?
A. He was general manager.
Q. Now, did you go there, afterward, later?
A. Yes sir.
Q. When?
A. I dont remember the months; I made about five trips there altogether, during the time I was representing them.
Q. And do you recall the occasion of your second trip there?

A. No, I do not.

467 Q. And about when it was, as near as you can recall, if you are able to fix the date at all?
A. Well, it was about three months after I had gone there, or begun selling goods for them, is my best recollection on that.
Q. That would bring it to about the last of the year, last of the year 1916, or the first of the year 1917, would that be about your recollection?
A. Right about that time, I think, probably; it was the early part of January, now, since you have mentioned that, the latter part of December or the early part of January.
Q. Now, when did you go down the next time, or go to Andalusia, let the question read?
A. Well, I dont remember that.
Q. Do you recall about the time you went there on the fourth trip?
A. It was either the fourth or fifth, that is when the next time was; the only thing that is clear in my mind is about the last trip that I made there.
Q. Now, when was that last trip made?
A. That was in September, I think.

Q. Do you recall whom you saw on the last trip?

468 A. I saw Mr. Henderson and Mr. Conner and the new man that Swift & Company had just put in there, I dont remember his name.

Mr. Horton: I object to that, and move it be stricken

out, on the ground that the witness has not shown that he is qualified to speak about whom Swift & Company put in there.

Examiner Sadler: The objection will be noted.

Mr. Horton: I also move to strike it out on the ground that it is not responsive to the question; hearsay; incompetent and immaterial, not within the issues.

Examiner Sadler: The motion will be noted.

Q. (By Mr. Taylor): Now, did you have any conversation with this new man whom you say Swift & Company had put in there?

A. Yes sir.

Q. Did he mention Swift & Company's name to you?

A. Yes.

Mr. Horton: I object to this entire line of testimony Mr. Examiner.

Examiner Sadler: The objection will be noted.

Mr. Horton: It is understood, is it, that the objection continues?

Examiner Sadler: Yes.

469 Q. Did he state whom he represented?

A. Yes.

Q. What did he stated in that regard?

A. That he was sent down to take charge of the office for Swift & Company, sent down from Chicago to take charge of the office for Swift & Company.

Q. Now, going back to your second visit there, and your third, do you recall the purpose of your going to Andalusia?

A. On this last trip?

Q. No, not the last trip, but the preceding trips, after the first trip.

A. Oh, to get in a little closer touch with them, to go over different matters with reference to accounts, and how they should be handled, and with reference to stationery, our accounting systems and different things like that.

Q. At that time did you go over any of your accounts?

A. Yes sir.

Q. And what were they, accounts with you as broker?

A. Yes.

Q. Were any accounts at that time kept with your customers?

A. Yes.

Q. That is in addition to the account that was kept 470 with you direct?

A. Well, they had no—you mean direct from Andalusia with the customers?

Q. Yes?

A. I dont know, there was not, so far as I know; I dont know what they kept, of course, but there was not, so far as I know; they kept a copy of our work in their ledgers, the same as we did on ours.

Q. I show you a book marked "Exhibit A-17 for identification" account of E. P. Allen & Company, Birmingham, Alabama; do you recall ever seeing this book before? This account?

A. I dont that particular account, no, that one was not in question so much as it was the general accounts that we were selling.

Q. You dont recall whether you saw that account or not?

A. No.

Q. I now show you book marked "A-19 for identification," account of E. P. Allen & Company, Birmingham, Alabama, consignment report of sales from E. P. Allen & Company.

Mr. Horton: We objection to the production and examination of this exhibit and the other exhibits mentioned, upon the ground previously stated, that it was
471 produced in response to a void subpoena.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I object, Mr. Examiner, to the reference to these subpoenas as void subpoenas. The position of counsel for respondent here is absolutely absurd. If there was any merit in his contention, it would mean that a proceeding of this sort could not be tried within five times the period that we are required to try them and dispose of them.

Examiner Sadler: The objection will be noted.

Q. (By Mr. Taylor): Do you recall ever seeing the account in the book referred to?

A. Yes.

Q. And did you examine this account at the time?

A. Yes.

Q. Now, can you explain what this record shows, this account?

A. That is the record, consignment record, showing the sale, shipments and sales against the shipments.

Mr. Horton: I object to the question and move to strike out the answer on the ground that the witness has not shown that he has any particular knowledge of these accounts, that he certainly could not have any personal recollection of them, after all these years. Also on the
472 further ground that it is incompetent and immaterial.

Examiner Sadler: Objection will be noted, and the motion to strike will be noted.

Mr. Taylor: Mr. Examiner, the witness has before him the account at the present time; he is not testifying from his recollection; but testifying from the accounts which are now before him.

Q. Mr. Allen, at the times that you went to Birmingham —to Andalusia, to check over your account, did you and the bookkeeper who kept this account refer to it together?

A. Yes sir.

Q. Examine it together?

A. Yes sir.

Q. Was the account discussed at that time by you and the bookkeeper?

A. Yes.

Q. And did you understand the account?

Mr. Horton: I object to the question, incompetent and immaterial.

Examiner Sadler: The objection will be noted.

A. Yes.

473 Mr. Horton: I further object to counsel leading the witness.

Q. (By Mr. Taylor): By account I mean the record, before the witness, showing the consignments, or consignment report. Now, Mr. Allen, will you please explain the way in which this consignment report or record is kept, what these different items and columns here mean?

A. When the shipment is first made to us, this first sheet here is a copy of the invoice that comes to us.

Q. And this first sheet is a short sheet, less than half of the length of the other sheet?

A. Yes.

Q. In the book?

A. Yes.

Q. Can this page that you now have before you be described by any identifying marks?

A. By the lot number, yes.

Also the car number—doesn't the car number appear on here?

A. No.

Q. And this page that you have before you has the indication "car L. & N. No. 56148" upon it; will that identify the particular page from any other page in this book?

A. Yes, that would, together with the date. Of course,

474 this car number could be used over again, but with the date there it would identify it.

Q. And the date is March 15, 1917?
A. Yes.
Q. I now call your attention to the short page bearing the date March 15, 1917, and car L. & N. No. 56148; will you please state what this page, or rather the entries on this page show?

Mr. Horton: Now, just a minute, please, Mr. Allen, and I will object to this specific question, and to continuing examining along this line, particularly on the ground that it is not a proper record by which the witness can refresh his recollection; these entries were not made by him, the books were not kept by him, and it is entirely improper to have the witness read the records into the record.

Examiner Sadler: The objection will be noted.
Mr. Horton: May it please be understood, Mr. Examiner, that the objection continues to the entire line of testimony?
Examiner Sadler: Yes.
A. This represents shipments made to us; in this case, the shipment that was made to us on March 15, 1917, consignment lot No. 51.
475 Q. (By Mr. Taylor): And that represents different kind of meats that were contained in that shipment, does it?
A. Yes.
Q. This first column is headed by the word "commodity," what appears in that column, beneath the word "commodity?"
A. A list of the different products in the car.
Q. The next column is headed "No. Pieces."
A. That is the number of pieces of the product.
Q. Of the product itself?
A. In the car.
Q. On the same line immediate opposite?
A. Yes sir.
Q. And next we find the general heading "consignment," and under that general heading "consignment" we find in one column "weight," in another column "price," in another column "Com." and in another column "amount." Taking those sub-headings under the general heading "consignment," what do we find in the column under the word "weight?"
A. The weight of the product.
Q. Of what product?
A. Contained in the car.

Q. You mean the product which appears on the same
476 line, opposite?

A. Opposite, yes.

Q. And take the word "price," the entries under the subheading "price?"

A. That was the price fixed on the product, supposed to be the market for that day.

Q. Did that price bear any relation to the price at which you were expected to sell the particular product?

A. No, did not.

Q. What was that intended for, do you know?

A. Merely as a consignment record, to complete their records.

Q. Now, under the column "com."

Mr. Horton: I object to that last answer, and move to strike it out, on the ground it is an argument of the witness.

Mr. Taylor: I dont think it is.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr. Taylor): "Com.", what does that mean?

A. That was for the amount of [illegible]mmission earned on the particular product opposite tha[illegible] same commodity line.

Q. The next subhead, "amou[illegible]"

A. Was the amount in dol[illegible]rs and cents of the product opposite the line.

477 Q. On the same line?

A. On the same line.

Q. Now, we find a further general heading "Final Returns", and beneath that the subheadings, one column "No. Pieces", second column "weight", and the third column "amount". Will you state what was intended to be inserted in those columns, and as a matter of practice was inserted?

A. Under the "No.Pieces" the total amount of pieces reported as having been sold out of that particular consignment, opposite on that line.

Q. Of the article on the same line?

A. On the same line. Under the head "weight" was the weight of the product, and under the heading "amount" was the amount in dollars and cents.

Q. And when were those entries under "Final Returns" placed in the record, if you know?

A. No, I could not tell you when they were placed there; they were placed there when the lots were closed, or when

they got our final closing out, one or the other, I dont know which.

Q. After receiving a report from you as to what had been done with the articles described on the particular line?

A. Yes.

478 Q. Now, in what way did they get information as to what you had done with these particular articles?

A. That they consigned, you mean?

Q. Yes?

A. We would send them carbon copies of the invoices every night for the sales made during that day.

Q. Sales made out of that particular lot?

A. Sales made out that particular lot, or we might have four or five lots open at the same time.

Q. Now, I observe that the page which you have just been describing bears the words "Lot No. 51"; the long page immediately following also bears the words "Lot No. 51"; also the head "Report of Sales from E .P. Allen & Company", followed by the words "Lot No. 51", which I have just read; will you please explain in what way this page was made up, and from what it was made up, what information?

A. That was made up from the information they got from our carbon copies of sales tickets, issued to the customers we sold; those sales tickets are numbered consecutively, and show the consignment number, the pieces, the weight, the price and the amount sold at, sold for.

Q. It is the report of sales sheet, you would describe this as the report of sales sheet, would you?

479 A. This sheet here?

Q. Yes, the one that you have been describing, the last?

A. The term that I have always been accustomed to using is account of sales.

Q. Account of sales sheet?

A. Account of sales sheet.

Q. Now, would it follow that where the account of sales sheet bears a given number, and the lot which corresponds with the number of the lot appearing on the—what do you call this—invoice sheet, the short page,—that it represents the sale of the same goods described in the account sheet, invoice sheet?

A. Invoice sheet, yes.

Q. Now, how many pages of the account sales sheet appear in this book to show the disposition of the goods shown in the invoice sheet, under Lot 51?

A. Four; I would say three and a part of the fourth one.

Q. And that shows in detail what was done with all of the meat shipped to you as shown in the invoice sheet No. 51, Lot No. 51?

A. Yes.

Q. Now, do you keep a record similar to the record 480 before you, which you have just been describing?

A. Yes. You mean do we or did we?

Q. Did you at that time?

A. Did we? Yes.

Q. And did you from time to time compare your records with the records kept by the Andalusia Packing Company?

A. Not personally, in every case, but we sent a carbon copy of our record; we kept it in duplicate form, and sent them a carbon copy of it, and if there is any differences they would always take it up with us.

Q. Did they occasionally take up with you the matter of some differences?

A. Yes.

Q. And whenever that happened, were the differences adjusted one way or another?

A. Yes sir.

Q. An understanding arrived at?

A. Yes.

Q. Did you have an occasion to look over this book which is now before you and check it over with the bookkeeper?

A. Yes.

Q. And did it always correspond with your records, 481 whenever you did?

A. No, did not always, sometimes would be mistakes in posting on their part or my part.

Q. Now, when that situation arose, what would happen?

A. We would make adjustments, get together on it.

Q. And arrive at a conclusion?

A. Yes.

Q. And what was done with regard to making them correspond, if anything?

A. Sometimes we would be short on one consignment, and over on another, we would make adjustments by transferring from one to the other.

Q. And what was the result, as they appear on the records of the Andalusia Packing Company, and corresponding records kept by yourself, after this adjustment?

A. They would always agree.

Q. Now, Mr. Allen, referring to the last trip which you took to Andalusia, do you recall the purpose for which you went?

A. Yes sir.

Q. And the circumstances leading to your going?

A. Yes.

482 Q. Will you state what it was?

A. We had had orders in with the Andalusia Packing Company for some products for a couple of weeks, and shipment had not been made; we had been calling them up—

Q. (interrupting) When was this, as near as you can recollect?

A. This was in September, as best I can remember, early part of September.

Q. 1917?

A. 1917. And we had been after them about getting the shipments out, and could not get any information, so I jumped on the train and went down to see them, to see what the trouble was.

Q. Now, I believe you have testified that at that time you saw Mr. Henderson, Mr. Connor, and some man who told you he was there representing Swift & Company?

A. Yes sir.

Q. Now, what was said at the time of your call there, with any of these three men?

A. Mr. Henderson told me first that the Andalusia Packing Company had been sold out to Swift & Company, and that he had been informed by Swift & Company's—by Swift & Company that there would be no change as far as

483 brokers were concerned, for the present, Then I went down to see Mr.—

Mr. Horton: Just a minute please. Move to strike out—I object to the last question, and move to strike out the answer upon the ground that it is hearsay; the witness should not be allowed to tell what Mr. Henderson told him; also upon the ground that it is incompetent and immaterial, not within the issues; and that the man that he has been talking about, Swift & Company, has not been properly identified; that sort of evidence is also hearsay.

Mr. Taylor: First let me ask the witness, before you rule, Mr. Examiner, let me ask the witness what was Mr. Henderson's connection with the Andalusia Packing Company at the time of this conversation to which he has just testified.

A. Well, I understood, I dont know, but I understood that he had no further connection with them.

Mr Horton: We object to what the witness understood. I dont think it makes any difference what he was or what his business was; it is still hearsay.

Examiner Sadler: The objections will be noted, and the motion to strike will be noted.

Q. (By Mr Taylor) Now, was that in September that you had the talk that you last referred to with Mr. Hen-
484 derson, in which he told you that Swift & Company had bought the company?

A. That is my best recollection about it, it was in September, early part.

Mr. Horton: I move to strike out the answer, and object to the question, upon the ground that it is merely an argument of counsel that such a conversation took place or such conversation is competent evidence.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr Taylor) Who else was present? Who was present, if anybody, besides yourself and Mr. Henderson at the time of this conversation?

A. No one at that time.

Q. Now, did you have any further conversation with Mr. Henderson, and if so, when?

Mr. Horton: I object on the ground that it is immaterial, not competent evidence.

Examiner Sadler: The objection will be noted.

A. Yes, at that same time, I talked further with him later on in the afternoon, I came back to see him.

Q. (By Mr. Taylor): Will you please state what was said?

485 Mr. Horton: I object to that, your Honor. It is clearly hearsay.

Examiner Sadler: The objection will be noted.

A. He told me to go down to the plant and meet the new manager, and that Mr. Conner was going to be there for a while and that he personally hoped that they would continue with us, that we had given them entire satisfaction in handling the goods here, and that he thought that we were entitled to it, to continue as agents, under the arrangement that we had had.

Q. And can you please fix as nearly as you can the date in September when this conversation with Mr. Henderson which you have just recited took place?

A. Well, it has been so long I dont want to say the date, but I think it was before the 15th of the month.

Mr. Horton: I will ask you to speak a little louder, please.
A. Before the 15th of the month.
Q. (By Mr. Taylor) You think it was before the 15th?
A. Yes.
Q. Now, did you go down to the plant?
A. Yes sir.
Q. Later, as Mr. Henderson advised?
A. Yes sir.
486 Q. Whom did you meet there?
A. Mr. Conner and this new manager.
Q. Can you recall his name?
A. No, I cannot.
Q. Was it Colt?
A. It dont seem to me like it was.
Q. Or Rogers?
A. Yes, it was Rogers; Rogers was the name—let me see—it was either Rogers there, or Rogers came to see me after I had been there, I dont remember which it was; I wont make a positive statement on that. There was two different men on two different occasions, Rogers had not come to Andalusia at that time, I dont believe.
Mr. Horton: The substance of it is you dont remember which or who it was?
Q. (By Mr. Taylor): You dont remember which it was at this particular time?
A. No.
Q. Do you remember meeting Mr. Rogers?
A. Yes sir.
Q. But it is your recollection that that was at a later period?
487 A. I am not positive about that, I dont say when it was, at this time, or a little later on.
Q. But you remember meeting Mr. Rogers at some time, whether at Andalusia—
A. (Interrupting) No, not at Andalusia — now, wait — I will qualify that statement now, because I said I didnt remember whether I met him on this trip; that was my last trip; I remember that I met Mr. Rogers; it might not have been on that trip.
Q. And if it was not in Andalusia, where was it?
A. It was in Birmingham at my office.
Q. Now, what was Mr. Conner doing at the time you went to the plant?
A. Why, I dont know what title he held at that time; he

was looking after shipments, and general supervision of the plant, so far as I could see, as he had always done.

Q. Apparently doing the same thing that you had seen him doing on previous visits?

A. Yes.

Q. And who else was present at this interview, if anybody? Besides Mr. Conner and the man who said that he was there for Swift & Company?

488 A. Well, the bookkeepers and stenographers and so forth were in the office, but they were not—just a small office, you know; they were all in there.

Q. Did Mr. Henderson go down with you?

A. No.

Q. Now, was—did you have a conversation there with either Mr. Conner or with the man who said that he was from Swift & Company?

A. Yes, both.

Q. With both. These conversations were had in the presence of each of these men?

A. Yes.

Q. Now, will you please state what was said at those conversations?

Mr. Horton: We object on the ground it is hearsay. Let me ask a question, please:

Q. (By Mr. Horton) This is still the Andalusia Packing Company?

A. So far as I knew.

Q. And still had the sign out, "Andalusia Packing Company"?

A. Yes sir.

Q. Their letterheads and billheads were still Anda-
489 lusia Packing Company?

A. Yes sir.

Q. And to all intents and appearances it was still the Andalusia Packing Company, an Alabama corporation, that was running the plant?

A. Yes.

Mr. Horton: I renew my objection upon the ground that any statement is ex parte and hearsay.

Examiner Sadler: The objection will be noted.

Q. (By Mr. Taylor) Now, will you proceed with your answer?

A. Why, I asked Mr. Conner, in this other gentleman's presence, why they were not shipping my orders, why they

were not notifying me what they were going to do or something; they said the reason they were not shipping was that they didnt have the goods to ship; and I asked them then whether or not there was going to be any change in the arrangement about selling goods in Birmingham. They said as far as they knew that there would not be; that they had not had definite instructions, but they knew for at least a few months that there would not be; that they did not care to sell the product through their own regular branch house in Birmingham, because they saw what a volume of business we had around there, and they wanted us to keep right
490 ahead and go on with it. That was about all there was to it, except that he promised that day to get me out a car the following day.

Q. And then you came back to Birmingham?

A. Yes.

Q. Did you receive a car on the following day?

A. I received about ten cattle and two thousand pounds of meat; less than a fourth of a car.

Q. And did you receive further shipments?

A. No. Well, I did from Georgia, from the Moultrie Packing Company, a shipment of lard, to take care of some contracts we had on some lard.

Q. Did you receive any further shipments at all from the Andalusia Packing Company?

A. I did not.

Q. Did you have any further conversation with the company regarding shipments?

A. I called them up each day or two, and they told me each day that they didnt have anything to ship, could not ship it.

Q. Now, you spoke about seeing Mr. Rogers, did you have any conversation with Mr. Rogers when you saw him?

491 Yes sir.

Q. What was that, what was said in that conversation?

A. Mr. Rogers told me that there absolutely would not be any change for several months at least, in the Birmingham end of the business, that they were getting a good bargain, and he thought it would be very foolish to turn that business over to the branch house, when it could be so easily worked as extra volume.

Q. And when was that, as near as you can determine?

A. That was in September.

Q. What time in September, do you recall?
A. It was after the 15th, is my recollection.
Mr. Horton: A little louder, please.
A. After the 15th.
Q. Do you know as a matter of fact whether the Andalusia Packing Company were, or whether they were not sending goods to the Birmingham branch house of Swift & Company?
A. Did I know whether they were.
Q. Did you know at that time whether they were or were not?
A. That is which time?
Q. At the time of this conversation with Mr. Rogers?
Mr. Horton: We object; it is not material, anyway.
492 Examiner Sadler: The objection will be noted.
Q. (By Mr. Taylor) You did know?
A. Yes.
Q. Were they at that time?
A. Yes.
Q. Did you call Mr. Rogers' attention to the fact that you knew that they were shipping, that the Andalusia Packing Company was shipping goods to the Swift branch house in Birmingham?
A. That there had been shipments, yes.
Q. You did call Mr. Rogers' attention to that?
A. Yes.
Q. What did he say?
A. Well, I dont remember just what was said on that; it seems to me that he said that he would look into it, and get it straightened out, so there would not be any conflict, that is my best recollection on that.
Q. Now, did you notice any difference in getting shipments from the Andalusia Packing Company after this conversation with Mr. Rogers?
A. We did not get any more.
Q. Did Swift continue to sell the meat products of the Andalusia plant through the Birmingham branch house after this?
493 A. Yes.
Q. And you know if they have continued to sell from that time on?
A. Except what the salesmen say, that it is Andalusia products; I hear that frequently.
Mr. Horton: I object to that, and move to strike out the answer on the ground that it is hearsay.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr. Taylor) Whose salesmen do you refer to?

A. Swift & Company salesmen.

Mr. Horton: I object to that on the further ground that it is hearsay.

Examiner Sadler: The objection will be noted.

Q. (By Mr. Taylor): Did you employ salesmen at the time you had the brokerage account of the Andalusia Packing Company?

A. Yes.

Q. What territory did they cover?

A. Birmingham and surrounding territory.

Q. And can you state who those salesmen were?

A. Yes. Mr. George D. Bauer.

Mr. Horton: Pardon me, how was that?

494 A. George D. Bauer, B-a-u-e-r; and A. T. Baugh, B-a-u-g-h.

Q. (By Mr. Taylor): What was the name of that last one?

A. A. T. Baugh, B-a-u-g-h; that is all I had at that time.

Q. And did you retain them after the Andalusia Packing Company ceased shipping goods to you?

A. Yes sir.

Q. Are they in your employ now?

A. One of them is.

Q. Which one?

A. Mr. Bauer, B-a-u-e-r.

Q. Do you know whether the Moultrie Packing Company was represented in this district, Birmingham?

A. Yes.

Q. By whom?

A. Mr. E. N. Wood.

Q. Do you know in what way he represented the Moultrie Packing Company?

A. As broker.

Mr. Taylor: You can cross-examine, Mr. Horton.

Cross-Examination by Mr. Horton.

Q. Did you have a contract with the Andalusia Pack-

495 ing Company, Mr. Allen?

A. Only a verbal contract.

Q. Only a verbal contract?

A. Yes sir.

Q. And there was no definite time specified in there?
A. No.
Q. That contract was cancelled, was it?
A. Never was cancelled, no.
Q. It was discontinued?
A. It was discontinued.
Q. Amounted to a cancellation?
A. Yes sir.
Q. I presume that the Moultrie Packing Company were entirely within their rights—I mean the Andalusia Packing Company were entirely within there rights in cancelling it?
A. I should not think so, under the circumstances, no.
Q. But you agree that opinions might differ on that proposition?
A. Oh, yes.
Q. If you have a man hired, and you have no contract for a definite period, you reserve the right to discontinue the employment at any time, do you not?
496 A. By giving him some reasonable notice.
Q. By giving him some reasonable notice. Simply amounts to a question of notice, then, in its broadest interpretation?
A. Yes.
Q. Now, I presume there was some competition in Birmingham, as there is in other cities, in the meat business?
A. Oh, yes.
Q. Competition?
A. Yes.
Q. Other people selling meat here?
A. Yes.
Q. Who were some of your competitors?
A. Swift & Company, Morris, Armour, Cudahy, St. Louis Independent Packing Company, Roth Packing Company.
Mr. Taylor: Mr. Examiner, I object to going into this, other than Swift & Company; it is outside of the direct examination.
A. I could name you fifty of them.
Q. (By Mr. Horton): About fifty of them.
A. Yes.
Mr. Taylor: One minute, we have an exception here. Objection.
Examiner Sadler: The objection will be noted.
Q. (By Mr. Horton): St. Louis Packing Company;
497 you said the Independent Packing Company?
A. Yes.

Q. St. Louis Independent Packing Company?
A. Yes.
Q. One packing company?
A. Yes.
Q. Who else?
A. I named Swift, Armour, Cudahy, Morris, St. Louis, Roth Packing Company.
Q. Roth?
A. Yes, R-o-t-h.
Q. Where were they from?
A. Waterloo, Iowa, Kingan & Company; Oscar Mayer.
Q. From Chicago?
A. Yes. I dont remember off-hand the others.
Q. Now, Swift & Company have a branch house here, have they not?
A. Yes.
Q. Amour & Company have a branch house?
A. Yes.
Q. Cudahy & Company have a branch house?
A. Yes.
Q. Wilson & Company?
498 A. Yes.
Q. And their predecessors, Sulzberger & Son had a branch house prior to that time?
A. Yes.
Q. Hormell?
A. He was not here at that time.
Q. He is here now?
A. Yes.
Q. Was he represented at that time?
A. Yes.
Q. By whom?
A. Myself.
Q. Yourself?
A. Yes sir.
Q. You have had other accounts besides the account of the Andalusia Packing Company?
A. Yes.
Q. And the Evansville Packing Company?
A. They were not here at that time, I dont think.
Q. Not here at that time; they are here now?
A. Yes.
Q. A. Sander Packing Company?
499 A. They were here, I think, but not with a stock in town here.

Mr. Taylor: What is this period that is intended to be covered by this question, Mr. Horton?

Mr. Horton: We will take that up as soon as I get these names in. We will go back and cover the period.

Mr. Taylor: Well, I dont see how the witness can state who was in the market, who were his competitors, without knowing when he is talking about.

Q. (By Mr. Horton): Well, has A. Sander Packing Company got a branch house here now?

A. No.

Q. They are represented here, are they?

A. I dont know whether they are now or not.

Q. And the Inman & Company?

A. They were not here at the time.

Q. They are here now?

A. Yes.

Q. There are some local slaughterers here?

A. Yes.

Q. Who are they?

A. Birmingham Packing Company.

500 Q. And the Alabama Packing Company?

A. They were not here when we were doing business with the Andalusia Packing Company, they were building at that time.

Q. The Birmingham Packing Company; they have a killing plant?

A. Yes, they were building, but had not begun operating; whether they had finished the plant, I am not positive about that now.

Q. I understand. Now, they have a killing plant, and they also have a branch house, is that right?

A. No.

Q. The Birmingham Packing Company?

A. The Birmingham Packing Company? Yes.

Q. Swift, Armour, Morris, Cudahy, Wilson, were all here in 1916, and continuously from that time on, were they not?

A. I wont say that Wilson was here then, because I dont know when that change was made to Sulzberger.

Q. Either Wilson or their predecessors, Sulzberger?

A. Yes.

Q. Now, were the rest of these companies, the St. Louis Independent Packing Company, Rath Packing Company, Kingan & Company, Oscar Mayer, were they here in 1916, and continuously from that time on?

501 A. Did not all carry stocks here; they were doing business here.

Q. And each one of these concerns is quite a sizable concern, is it not?

A. Yes.

Q. They did as much business as you did, or more?

A. No, I dont think they did.

Q. Some of them did?

A. I dont think that either of those last that you mentioned; I dont mean the branch houses, of course.

Q. All the branch houses did?

A. All the branch houses did more business than I did.

Q. Was Allen & Duke here in 1916 or '17?

A. I think it was the firm of Allen & Duke at that time.

Q. Have they or their predecessors or successors been here continuously since that time?

A. Yes.

Q. Schaffer & James?

A. They were not here.

Mr. Taylor: Is it understood, Mr. Examiner, that my objection goes to all of these questions?

Examiner Sadler: Yes, that will be understood.

502 A. I dont know what year they went in here, but they were here in 1918, 1919, and 1920.

Q. Are they here now?

A. No.

Q. Cocke & Lynch, were they here in 1916 or 1917?

A. I didnt know it if they were; I understand it is a new firm that went in about a year ago. Mr. Cocke was here, but he was not selling packing house products at that time.

Q. Are there more or less people doing business here now than there was in 1917?

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

A. I could not say; I have not figured it up; I imagine it is just about, competition is about as keen now as it was at that time.

Q. It was keen at that time?

A. Yes sir.

Q. And it is keen today?

A. Yes sir, very keen.

Q. It has been keen at all times while you have been in business, was it not?

A. I have been in Birmingham for about nineteen
503 years, and I have never seen a year yet that it was not.

Q. Now, what other accounts did you have besides

the Andalusia Packing Company, at the time you were representing them?

A. The Wilson Provision Company, and the Sinclair Sales Company, which is a subsidiary of the T. M. Sinclair Company.

Q. The Wilson provision Company have a plant at Peoria, Illinois, have they not?

A. Yes.

Q. The Sinclair has a plant at Omaha?

A. Cedar Rapids.

Q. Cedar Rapids?

A. Yes sir.

Q. Omaha too, or Council Bluffs?

A. Not that I know of.

Q. You had the Hormell account too?

A. No.

Q. Not at that time?

A. Never did have it.

Q. Never did have it?

A. No.

Q. I thought you told me you represented one of those packers a minute ago.

504 A. You thought I told you that?

Q. Yes.

A. You misunderstood that that; I never did represent Morrell at all.

Mr. Horton: The witness wishes to correct his statement in regard to the statement that he represented George A. Hormell & Company.

A. Oh, I represented them; I thought you said Morrell a minute ago; that is what mixed me up.

Q. Then at the time you represented the Andalusia packing Company, you were representing Hormell, Wilson Provision Company, and Sinclair?

A. I was carrying stocks for Wilson & Sinclair; I did not ever carry stock for Hormell.

Q. Well, did you sell their goods?

A. I sold an occasional car, yes sir.

Q. You took the orders here, and they would ship the goods?

A. Yes sir.

Q. What concerns are you representing now?

A. The Iowa Packing Company.

Q. Where are they?

A. Des Moines.

505 Q. Des Moines?

A. Des Moines. The Sinclair Sales Company, Cedar Rapids; that is all, except that I get quotations from about half a dozen packers, indirectly, on carload lots.

Mr. Horton: I think that is all.

Redirect Examination by Mr. Taylor.

Q. Now, Mr. Allen, Mr. Horton has brought out this matter of competition, will you please state who was selling here —or, first, will you state what you were selling in the way of fresh meats for the Andalusia Packing Company during the period from September 1916, down to July, 1917?

A. Pork products and beef.

Q. And can you state generally with relation to your total sales what relation the fresh pork products bore?

A. Why, it was a little better than fifty per cent of it.

Q. Now, who else in this market was selling fresh or frozen pork products?

A. No one except the branch houses of the Big Five.

Q. And by that do you mean southern pork or western pork, or both?

A. At that time there was not anything except west-

506 ern pork sold here.

Q. That is, by the branch houses of the Big Five?

A. Except that there was an occasional car of beef brought in here from Texas.

Q. For the present confine youreslf to fresh pork. All of the western pork was sold by the branch houses of the Big Five, would that be your answer?

A. Yes.

Q. And whom do you mean by the Big Five?

A. I mean Swift, Armour, Cudahy, Morris, & Wilson.

Q. Now, what was the character of the pork that you were selling for the Andalusia Packing Company?

A. That was—I didnt quite catch you, what—

Q. You referred to western pork being sold by the Big Five?

A. This was southern or Alabama pork.

Q. Was there any southern prok being sold here aside from that that you were selling?

A. Except that Mr. Wood occasionally brought in a little by express from Moultrie.

Q. Now, take the Moultrie product and your own product, that is, the fresh pork from Moultrie and the fresh pork from Andalusia that you were selling, could you state how

far that pork would—how that pork would compare in
507 volume with the pork sold by the Big Five, the fresh pork sold by the Big Five?

Mr. Horton: Just a minute, please. I object to that, on the ground that it is incompetent, that the witness has not qualified as an expert here, nor has he qualified or shown himself to be in position to give an intelligent answer upon that question.

Mr. Taylor: Counsel for the respondent seems to have forgotten the fact, when he was cross-examining him—I am only going into the matters that were brought out on cross-examination, developing them a little bit further.

Examiner Sadler: The objection will be noted.

Mr. Horton: Just let me ask a question or two, please:

Q. (By Mr. Horton): Did you have access to the records of any other packing house?

A. No.

Q. Did you visit their plants, other than occasionally?

A. I was around there almost daily, at most of the other plants, not all of them.

Q. Not all of them?

A. Not all of them, no.

Q. You would not have a chance to see what stocks they had on hand, when you were there, would you?

508 A. Except what I could observe, the floor.

Q. Except what you could observe on the floor?

A. Yes sir.

Q. Most of their fresh meat is carried in the cooler, is it not?

A. Yes sir.

Q. You would not get into that cooler, would you?

A. Frequently, yes sir.

Q. Would you go into that cooler every time you went there?

A. Oh, no.

Q. There would be many times that you would not go into there?

A. Yes.

Q. Now, you dont mean to say that you had been at the plant of Swift & Company every day, do you?

A. I was by there two or three times a day.

Q. Sometimes two or three times a day?

A. Sometimes four or five times a day.

Q. You dont mean to say that you were there every day, do you?

A. Well, I had to go—I didnt have to go by there, but I went by there in going to and from my meals, and go-
509 ing home from work.

Q. Well, you passed the plant?

A. Yes.

Q. You dont mean you were inside every day?

A. No, not every day, not two or three times every day.

Q. And the same thing would apply to the plant of Armour & Company. Did you pass that when you went to your meals, too?

A. No.

Q. How often would you go to Armour's plant?

A. Go by there every day.

Q. How often would you go into it?

A. I would go into it about two or three times a week, as a rule.

Q. Did you always get into the cooler when you went into it?

A. No.

Mr. Horton: I submit that the witness is not qualified to express an opinion upon the volume handled by anybody else but himself.

Mr. Taylor: I think, Mr. Examiner, that counsel for the respondent pretty well qualified him. I would like to ask one or two more questions right along the same line, before asking for the answer to the unanswered question.

510 Q. (By Mr. Taylor): Were you visiting the meat markets and places where meat was sold from time to time?

A. Yes sir.

Q. In Birmingham. Visited your customers frequently?

A. Yes sir.

Q. How much of your time was spent in canvassing the trade?

A. About five or six hours a day.

Q. Every day in the week?

A. Yes sir.

Q. When you called upon these customers, was it part of your business to ascertain what products they had on hand?

A. Yes sir.

Q. And know what they were in the market to buy?

A. Yes sir.

Q. Not only tell by looking over their meats and ascertaining what they had on hand, but tell the character of fresh

pork, whether it was western pork, or whether it was southern prok?

A. Yes sir.

Q. Now, then, as a result of your experience as a salesman, as a result of these visits from time to time, and from day to day during the number of hours that you have testified to, do you feel that you can state approximately
511 what proportion of the fresh pork sold in the city of Birmingham was southern pork and what was western pork?

Mr. Horton: I object on the ground that the evidence is entirely incompetent, further than that, the witness is not qualified himself to express an opinion upon that subject.

Examiner Sadler: The objections will be noted.

A. I dont know that I can, because there is—when you say the city of Birmingham, do you mean what is shipped out of Birmingham, or right down in town?

Q. (By Mr. Taylor): I mean the amount that is sold in the city of Birmingham by the retail markets?

A. Downtown section.

Q. Well, if you wish to qualify your answer, you may do so; answer as fully as you feel that your experience will enable you to do, and qualify it accordingly, if qualification is necessary.

Mr. Horton: I repeat my objection.

Examiner Sadler: The objection will be noted.

A. Well, I would say that we had fully twenty-five per cent of the business on fresh pork cuts in the downtown section of Birmingham; as for the outside section, I could not state, because I did not see it personally.

512 Q. (By Mr. Taylor): Now, when you say "we" just what do you mean?

A. E. P. Allen & Company, as brokers for the Andalusia Packing Company.

Q. Do you know who covered the outside section?

A. Of Birmingham?

Q. Of Birmingham, yes. Who canvassed the trade there?

A. No, I didnt have but one outside man, and he covered it; it took him two or three weeks to get over the territory; we did not do very much fresh meat business outside of Birmingham; very little.

Q. Who was that?

A. That was Baugh, A. T. Baugh.

Q. Now, when you say—when would you say that the pro-

portion you have just testified to briefly as approximately correct, during what period?

A. During the period from January, 1917, until, I would say, August, 1917.

Mr. Horton: I object to that and move to strike out the answer on the ground it is incompetent.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

513 Q. (By Mr. Taylor): Now, Mr. Allen, Mr. Horton has asked you if competition was pretty sharp here in Birmingham; I will ask you if you found it pretty sharp between yourself and Swift & Company during the period you have just been testifying to, from September 1916 down to the end of July, 1917?

A. Yes sir.

Q. Now, take from September, 1917, on, was competition keen between the Andalushian Products, meat products, and Swift & Company, was E. P. Allen selling the Andalusia meat products?

A. You mean while Swift was selling the same products that I was selling?

Q. Well, take it after September, after September, 1917?

Mr. Horton: He has answered that question.

A. I dont know as I quite get that question, just what you mean; you say I sold them in September, sold Andalusia products?

Q. Take it after September?

A. Yes sir, I found it very keen, yes.

Q. What were you selling after September?

A. I was selling for the Bullock Company, Bullock Packing Company, Statesboro, Georgia.

Q. Was there any competition between Swift & Company and yourself in selling Andalusia products after September, 1917?

514 A. For about two months in there there was not any competition with Andalusia and me.

Q. Between you and Swift, in the sale of the same products?

A. Oh, yes, I didnt catch that question either, I got it just kind of mixed up. We both had the Andalusia products.

Q. And after that who sold the Andalusia products?

A. Swift.

Q. How much Andalusia products did you sell after September, 1917, can you state?

A. Why, we sold this two thousand pounds of pork and

the ten cattle, and the balance ot the lard that we had on hand, probably we sold a car of meats.

Q. That was all the material that you had received in September, wasnt it, or previously?

A. Yes, on the 15th day of September.

Q. Now, take January 1st, 1918, was there any competition between Swift & Company and anybody else in the selling of the Andalusia products?

A. Not that I have ever heard of here.

Q. Now, take the month of February, 1918, I will ask you the same question?

A. No.

515 Q. Competition was entirely eliminated?

A. Yes.

Mr. Taylor: That is all.

Recross Examination by Mr. Horton.

Q. You did not mean to say that competition was entirely eliminated, did you?

A. On the Andalusia product.

Q. You just say that the Andalusia product changed representatives here in Birmingham?

A. How is that?

Q. That you were no longer handling the account, that is what you mean to say?

Mr. Taylor: No, he means to say more than that.

A. If anyone else was selling it, so far as I know, here, I didnt here of it, if it was Andalusia products.

Q. Now, your answer about this twenty-five per cent of the fresh pork, the volume of the fresh pork business, is confined to a downtown section here, is it not; downtown section here in Birmingham?

A. Well, what we term in Birmingham as the old Birmingham limits, you might say, that would not take in Bessemer.

516 Q. In the center of the city?

A. Or some of these outside towns, you see; does take in Ensley, not Bessemer.

Q. Isnt it a fair statement to say that that product was moved to those people at a price, that it, they were buyers who looked for cheap meat?

A. No, I would not say so; I sold the very best class of trade in Birmingham.

Q. And by the best class of trade what do you mean?

A. I mean the butchers that carried the best grade of meats.

Q. This product that you were handling was known as soft pork, was it not?

A. No, it had not been termed soft pork at that time.

Q. Pardon me.

A. It had not been termed soft pork in Birmingham at that time.

Q. But as a matter of fact, it was soft pork, it was southern hogs?

A. Yes sir, it was southern hogs.

Q. It was soft?

A. Yes, some of it was; some of it was just as firm as western meats.

517 Q. Wasnt that soft pork sold at a differential under the price of the hard western pork?

A. Not when we were selling it.

Q. Do you mean to say you got the same price that anybody else got?

A. We got around the same price, and frequently—I have seen dozens and dozens and dozens of cases when we got better than the price that the big packers did.

Mr. Horton: I think that is all.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.

Mr. Taylor: Mr. Examiner, I would like to recall Mr. Allen again for a question.

Examiner Sadler: All right.

WITNESS E. P. ALLEN recalled.

Q. (By Mr. Taylor): Mr. Allen, I show you a book marked Exhibit A-17 for identification. Will you please look at that book there and state whether or not you ever saw it before?

A. Yes sir.

Q. Where did you see it before?

518 Mr. Horton: Mr. Examiner, is it understood that it is improper to go into matters that have not been gone into on direct examination. Are you holding to strict rules of evidence on that, or is it a matter within your discretion?

Examiner Sadler: I didnt catch that?

Mr. Horton: Are you following the strict rules of evidence in this case, that an objection would be proper when the matter was not brought out on direct examination, or is that a matter which is within your discretion?

Examner Sadler: It is a matter in the discretion of the examiner.

Mr. Taylor: Mr. Examiner, I would state in regard to the present examination that I would ask to have it considered as direct examination, and counsel for the respondent have the same rights in regard to cross-examination as though it were direct examination, rather than redirect.

Examiner Sadler: All right.

Q. (By Mr. Taylor): Can you state where and when you saw it before?

A. On my visits to Andalusia, I would go over the accounts with them, and you will find my little notations all the way through the book here, the ledger in my handwriting.

519 Q. You have before you what page, of what account?

A. Carmichael & Holcomb, of East Thomas, Alabama.

Q. And the notations made by you?

A. Terms—in going over these different accounts with the credit man at Andalusia, he asked me to put the customary terms we were selling them, other products for them, for the other houses we were representing at the time; so I went through the entire ledger, of all the open accounts at that time, and put the terms here that we were giving those same customers for the other accounts that we were selling. On this particular account we put "monthly for provisions and weekly for fresh meats." I put that on there myself.

Q. And the pencil marks there, "monthly for provisions and weekly for fresh meats"—

A. "Monthly for provisions and weekly for fresh meats."

Q. Were made by you in Andalusia?

A. Yes.

Q. Can you state the time that that was made?

A. I could not state the time, but it was on one of these visits there before the last visit; it was not the last visit at all.

Q. Before September, 1917?

520 A. Yes.

Q. And after July, 1916?

A. Yes sir. Here is an account over here, right here, that is not my notation there.

Q. In whose presence were those notations made, if anybody's?

A. The credit man, the man in charge of the accounts there.

Q. The credit man?

A. At Andalusia.

Q. At the Andalusia Packing Company?

A. Yes. That is my writing there.

Q. What was his name, Davis?

A. Yes, Davis. That is his name.

Q. W. A. Davis. What were these books presented to you as representing?

A. As representing the accounts that we had sold.

Q. Do you remember whether they were characterized in any way as ledgers, or anything else?

A. Ledgers, Birmingham ledger is the way it was characterized. I was going over it.

Q. The account that you now have before you, in which you identify the handwriting, made at that time, is the account of the Central Iron & Coal Company?

521 A. Yes sir, Kellerman, Alabama. I put on their monthly terms. Monthly, I mean thirty days—it dont mean thirty days, either—it means regular monthly terms; they pay around the fifteenth of the month, for the previous month's purchases. There is two accounts here—that notation there in pencil was put there because we had another account under the same head; I think you will find it went to Holt, Alabama; it is all one and the same concern, and the goods was paid for from one point here. That notation there was put on at the same time by Mr. Davis, at my suggestion. I remember it now, "payment about the 20th of the month."

Q. Who is Mr. Davis?

A. He was cashier of the—credit man of the Andalusia Packing Company, I dont know what his official title was, but he was the man in charge of the ledger.

Q. Do you know whether Mr. Davis kept these books or not?

A. I saw him working on them; whether he kept them all or not, I dont know.

Q. And you have now before you the account of—

A. J. G. Dickinson & Company. I put "terms monthly on provisions and weekly on fresh meats."

Q. Are you acquainted with these customers personally?

522 A. Well, this man here I am, yes. I will have to go back and see these others to tell. I am not with this

man, Central Iron & Coal, I dont know personally; he is down sixty-five miles from here. These people I was personally acquainted with, Carmichael & Holcomb.

Q. Did you sell all these people?

A. Yes sir.

Q. And you were selling to them at that time, selling Andalusia products?

A. I did.

Q. And other products?

A. Yes. Here is another account I put monthly terms on, S. J. Downey.

Q. Did these accounts represent the Andalusia meat products which you were selling?

A. Yes sir.

Q. The parties whose names you identify?

A. Yes. M. Domit and Sons; that is spelled wrong here; they have it here D-o-m-m-i-t-t. I put terms monthly on provisions, and weekly on fresh meats. J. E. Davis, I put terms monthly on provisions, weekly on fresh meats. C. E. Davis,

I put terms monthly on provisions and weekly on fresh
523 meats. That is not my handwriting there; neither is that. W. B. Emond, I put terms monthly on provisions, weekly on fresh meats. Eureka Coal Company, I put terms on there of monthly; this is not in my handwriting, Earl Brothers, I put thirty day terms on there.

Q. That was in your handwriting, was it?

A. Yes sir, that was my handwriting. Empire Coal Company, I put monthly terms on that. Evansville Packing Company, weekly terms. A. Goldberg, I put thirty days on provisions, monthly, weekly on fresh meat.

Q. What does E. P. A., Birmingham, Alabama, mean?

A. I dont know what he puts that on for; I have not seen that on any other one; it might be that I guaranteed that account.

Q. Well, you dont know what that is?

A. No, I am not sure about that.

Q. Are those your initials, E. P. A., Mr. Allen?

A. Yes, that is my initials.

Q. But you did not write them?

A. I did not write them, no. I put terms on the Gulf State Steel Company of monthly, on that account. I didnt put this here. I put weekly terms on Grimes Brothers account. I put weekly terms on Griffin Brothers.

524 Q. Now, Mr. Allen, glance through the book shown, and see if you observe about the same proportion of

marks made by you, which you recognize, on the additional accounts?

A. Without going further?

Q. Without mentioning in detail as you go?

A. Yes sir.

Q. Do you find they run about the same?

A. About the same way all the way through, yes sir.

Q. Do you recognize that was the Birmingham ledger, kept by the Andalusia Packing Company?

A. Yes.

Mr. Taylor: That is all.

Mr. Horton: That is all.

Examiner Sadler: That is all, gentlemen. We will adjourn until 9:30 in the morning.

(Whereupon at 4:35 P. M., March 9, 1921, an adjournment was taken until 9:30 o'clock, A. M. of the following day, March 10, 1921.)

525 Birmingham, Alabama, March 10, 1921.
9:30 o'clock, A. M.

Met pursuant to adjournment.

Examiner Sadler: The hearing will come to order.

GEORGE D. BAUER called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. Your name, please?

A. George D. Bauer.

Q. And your address, please?

A. 2315 First Avenue.

Q. Birmingham?

A. Yes sir.

Q. What is your business?

A. Packing house business.

Q. What branch of the work of the packing house business are you engaged in?

A. Fresh meats and provisions.

Q. What do you do?

A. I have charge of the fresh meats of E. P. Allen & Company.

526 Q. You are employed by E. P. Allen & Company?
A. Yes.
Q. And have charge of the fresh meats. What do you do, what is the nature of your duties?
A. Jurisdiction of the sales department.
Q. Do you act as salesman yourself?
A. Yes sir.
Q. What territory do you cover?
A. Birmingham and vicinity, as far as Tuscaloosa, up as far as Gadsden at the present time.
Q. How long have you been with E. P. Allen & Company?
A. Four and a half years.
Q. When was it you went with them, as near as you can fix the date?
A. November 10th, 1916.
Q. At that time was E. P. Allen the broker in Birmingham for the Andalusia Packing Company?
A. Yes sir.
Q. And at that time did you have anything to do with the selling of the meat products of the Andalusia Packing Company?
A. Yes sir, I did.
Q. Where did your territory—what was your terri-
527 tory at that time?
A. Birmingham and the suburbs.
Q. And did you personally canvass the market at that time?
A. Yes sir.
Q. And sold Andalusia Packing Company meat products?
A. Yes sir.
Q. Now, take the first six months of that period, or say, down to the end of July, 1917, as you were going about from time to time selling products, meat products of the Andalusia Packing Company—

Mr. Horton: I object to counsel leading the witness. He has been leading him all the way through, and while I submitted to it during the preliminary part of the interrogation, I think it would be well to let the witness do some of the talking.

Mr. Taylor: I submit that I am still on the preliminary part of this examination. I will very shortly arrive at the part where I shall give the witness an opportunity to talk.

Examiner Sadler: The objections will be noted.

Q. (By Mr. Taylor): Read that as far as I got.

(Question read).

Q. Did you occasionally meet or see the salesmen of Swift & Company?

528 A. Occasionally.

Q. And what were they doing?

A. Trying to sell goods for Swift & Company.

Q. What kind of goods?

A. Why, all their products, fresh meats and provisions.

Q. What kind of goods were you selling of the Andalusia Packing Company products at that time?

A. I devoted my attention principally to the fresh meats, pork loins, shoulders, and all different beef cuts.

Q. Any beef?

A. Why, occasionally; did not get any beef in until after January, 1917.

Q. Now, state more fully what you saw and observed with regard to sales by salesmen of Swift & Company?

A. Nothing in particular, only they were trying to sell goods like the other competitors of ours were, their own products.

Q. And did that include all the same products that you were selling for the Andalusia Packing Company?

A. Same kind of products, same cuts.

Q. Not the same character, but the same kind, fresh meats, the same kind of cuts?

A. Yes sir.

529 Q. What was this principally what is known as western pork that is, the pork that the Swift & Company salesmen were selling?

A. Western pork, corn fed stock.

Q. And as you called upon retailers from day to day in this market, did you observe the same kind of meats that you were selling in there—please state what you observed in regard to the goods they had in stock?

A. The other packers were selling western products, one or two packers here were selling some of the southern product.

Q. Were you able to tell from marks on the meats the source from which they came?

A. Yes.

Q. Did you see any there from Swift & Company?

A. Southern product, at that time?

Q. If any, any kind, state what kind you saw from Swift & Company?

A. Western boods, that is all.

Q. And what were they?

A. Corn fed stock.

Q. By corn fed stock, what do you mean, what kind of stock?

A. Western.

530 Q. What kind of animal, stock, what kind of animals?

A. Why, pork and beef.

Q. How long did you continue to sell this meat product of the Andalusia Packing Company?

A. Sold it from November until the latter part of September, 1917, November, 1916, to September, 1917.

Q. Able to find a good market for it?

A. Yes sir.

Q. Sell all you could get?

A. Yes sir, could have sold more.

Q. Develop that idea, tell us more particularly about your experience with regard to selling it, and with regard to getting it, what the condition you found was, both with regard to selling it, and with regard to getting it?

A. Well, at that time, we had—there seemed to be—of course, the Andalusia Packing Company being in Alabama, why, we were rather active in developing that account, telling the people that it was a home state institution, and they goods that they turned out very good, and the trade seemed to like it. Of course we began increasing the business and sold all that we practically could get from them. We were fortunate in having an overnight run out of Alabama,—

531 that is, out of Andalusia into Birmingham, and we got the cars in promptly—they were not delayed any.

Q. And did that have any effect on the quality of the meat, as you were able to deliver it to the retailer?

A. Oh, yes.

Q. What was it?

A. It got to us in the fresh state; would not have to freeze any of it at all, brought it in here, was not—the run was practically eighteen hours from the time it left the packing house until the time we were able to make delivery.

Q. And with those advantages, was there very much of it used?

A. We were able to build up a quite a nice trade on it.

Q. Could you tell about how much of the Andalusia meat was used here in this market, that is, in relation to the other meats of the same kind?

Mr. Horton: We object to that, I dont believe that anybody, unless they properly studied the situation, un-

less they had had the advantage of facts and figures on the proposition, can answer it. It is a broad question.

Examiner Sadler: The objections will be noted.

The witness: Want me to answer?

Q. (By Mr. Taylor): Please state what your recol-
532 lection—or or, rather, what your observation in that connection was—first, can you form any estimate? The question calls for an answer of yes or no.

A. The only rough estimate that I can form is that in the section in which we sold those goods in Birmingham, and the amount of fresh meat that we did sell, in a stated period.

Q. Yes; I want you to limit your answer to what you actually observed and saw, and feel that you can answer with a reasonable degree of correctness and accuracy.

A. Pretty hard matter to tell how much was sold, you know.

Q. What would be your best judgment?

A. About twenty five per cent of what was sold at that time in the downtown section, trade that we principally went after.

Mr. Horton: I move to strike out the answer, your Honor.

Examiner Sadler: The motion to strike will be noted.

Mr. Horton: Just a minute.

Examiner Sadler: Pardon me.

Mr. Horton: It is indefinite, too indefinite.

Mr. Taylor: In what respect?

Mr. Horton: It does not refer to any particular time, and it is not based upon anything; as the witness said, it is a rough estimate, and a rough guess, and it is not definite
533 enough for the purposes of this issue.

Mr. Taylor: I dont think the witness characterized it as a rough guess; he was calling upon these people from day to day for the purpose of selling them meat, the same kinds which they were buying, both from him and from other sources; he is a salesman, I think the court will take judicial notice of the fact that it must have been necessary for him to know what these people actually had in stock, in order to know what they were in the market for, to know whether he could sell them his produce, so that it is a thing that was necessary in the course of his business, for him to keep before his mind constantly, all of the time, what they had, what they were buying, that amount of their output.

Examiner Sadler: The objection will be noted.

Mr. Horton: It is a motion to strike.

Examiner Sadler: And the motion to strike will be noted.

Q. (By Mr. Taylor): Now, Mr. Bauer, this period that you have been talking about about along during the—

Mr. Horton: I object to leading the witness, to counsel leading the witness.

Q. (Continuing) During the year 1916, 1917, and down through July and August of 1917—directing your attention more particularly—strike out the year 1916—during the year 1917, down to, say, the end of August, 1917, directing
534 your attention more particularly to that time, what will your answer be with regard to the percentages?

A. Of goods sold?

Mr. Horton: Same objection.

Examiner Sadler: The objection will be noted.

A. Of goods sold by us and what was sold by the other packers?

Q. Yes, the proportion of the Andalusia pork, the Andalusia meat products, compared with the fresh pork—the Andalusia fresh pork as compared with the fresh pork of the other packers.

Mr. Horton: By the other packers, do you mean all the other packers, and all of the slaughterers, local slaughterers and all?

Mr. Taylor: All the other goods that he saw in the markets.

A. The trade I went to see and handled, in that section, my judgment, it would be twenty-five per cent.

Mr. Horton: I move to strike out the answer on the grounds previously mentioned.

Examiner Sadler: The motion to strike will be noted.

Q. (By Mr. Taylor): Now, will you please describe more in detail the part of the city that you include in that answer?

A. Why, Second Avenue, Fourth Avenue, Eighteenth Street, Twentieth Street, Avondale, Woodlawn and Ensley.

535 Mr. Horton: What is the last one, please?

A. Ensley.

Q. (By Mr. Taylor): How much of the city of Birmingham does that leave outside of the territory that you described?

A. A large portion of it. There is any number of small dealers; that leaves out North Birmingham; that leaves out Pratt City, Eastlake, and a considerable portion of the center of Birmingham.

Q. And why do you leave them outside of your estimate?

A. We had not facilities to do the delivering to those sections; therefore we did not cater to their trade.

Q. Do you know what the trade bought outside of that distract that you included in your estimate?

A. They bought from all the other packers.

Q. Is the section of the city that is included in your estimate in what is known as the downtown portion of Birmingham?

A. Yes sir.

Q. And does that include any—the entire business portion of Birmingham?

Mr. Horton: I object to counsel leading the witness; I further objection to the ruling that is being made upon it; I think that is a matter which the Examiner ought to rule definitely on. He can see that the questions are leading,
536 and it is a matter which ought to be prohibited; it goes to the information which is being elicited from the witness.

Examiner Sadler: Counsel for the commission will not lead the witness.

Q. (By Mr. Taylor): Will you please describe the character of business that is done in the district of Birmingham which is included in your estimate?

A. Why, Second Avenue, Fourth Avenue, Eighteenth Street—

Q. (Interrupting) Yes, I know, but the Federal Trade Commission doesnt know what kind of business is done on Second Avenue, Fourth Avenue, or Eighteenth street, and the court does not know. I want a description here by which the commission and court will later on know what kind of business was done there.

A. Well, the principal meat markets are on those streets, and the larger buyers; they sem to be the meat centers of Birmingham.

Q. By the larger buyers, just what do you mean?

A. The buyers that will buy from three hundred up to a thousand or fifteen hundred pounds at a time.

Q. Have you any idea what proportion of the total meat of the city of Birmingham is bought within the distrcit
537 which you have included in your estimate?

A. In the section that I just mentioned?

Q. Yes.

Mr. Horton: I object to that question.

A. About thirty per cent.

Examiner Sadler: The objection will be noted.

Q. What district of the city of Birmingham are the dry goods stores and shops, and the general shopping district in?

Mr. Horton: Object to that?

A. Why, First Avenue to Fourth.

Examiner Sadler: The objection will be noted.

A. And from 19th to 21st.

Q. Now, what is the relation with regard to the location of these shops to the district which you have included in your estimate?

A. Well, they seem to be centrally located, and they do lots of advertising and draw the trade of the public down to them.

Q. I dont think you fully answered the question. I ask that the question be read to the witness again.

(Question read)

A. I dont quite get that.

Q. What is the relation with regard to the district in the city of Birmingham in which the shops, and trading places that you have mentioned, the department stores, with re-
538 lation to the district that is included in your estimate where you sold your met products, where you estamated that there was about twenty-five per cent of Andalusia meat handled and sold?

A. With relation to the department stores?

Q. What is the relation of the districts covered by the two locations?

A. Why—

Q. You have described the shops as being in a certain location; you have described the district in which the estimate is made, what is the relation between the locations of those two?

A. They are practically in the same location, with the exception of one or two blocks difference, that is all, all in that same area.

Q. Where are the office buildings in the city of Birmingham located?

A. In the center of the city, First Avenue, the district that I have mentioned.

Q. Do you mean the district which you estimated the twenty-five per cent of the fresh pork was used?

A. Practically in that same district, yes sir.

Q. Now, up to what time did you say that you continued to sell the Andalusia meat products?

539 A. Latter part of September, 1917.

Q. What happened at that time, at the time you stopped selling?

A. The plant was sold to Swift & Company.

Mr. Horton: I object to the answer and move to strike it out as being based upon hearsay information.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Mr. Examiner, we are not endeavoring to prove by this witness that the plant was sold to Swift & Company, we are simply showing conditions which existed here in the market, things which are material to this issue. For that purpose I submit the evidence is perfectly competent. Now, I will ask the witness for the same purpose when he first heard that the plant had been sold to Swift & Company?

A. In July 1917.

Mr. Horton: Object to that, and move to strike it out as being hearsay evidence.

Examiner Sadler: The objection will be noted and the motion to strike will be noted.

Q. (By Mr. Taylor) And what did you hear about that?

A. that Swift & Company had bought the Andalusia Packing Company.

540 Mr. Horton: Object to that and move to strike it out as being hearsay evidence.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Mr. Taylor: Oh, I admit that it would be hearsay and incompetent if we were attempting to prove the purchase of the plant by Swift & Company. For that purpose it would undoubtedly be absolutely incompetent.

Q. How did you hear this?

A. Why, Mr. C. P. White, the manager of Swift & Company branch here at that time is the one that gave the information.

Q. Well, I think we are coming pretty close now. I dont know that I will make the same concession that I did before. What did Mr. White say?

A. He came in the office and said that he understood that Swift & Company had bought the Andalusia Packing Company.

Mr. Horton: We object to that and move to strike out both this and the preceding question and answer, because it is shown that even Mr. White did not know what he was talking about.

Examiner Sadler: The objection will be noted and the motion to strike will be noted.

Q. (By Mr. Taylor) And did you say anything—did
541 Mr. White say anything about your account, about you continuing to handle Andalusia Meat products?

A. Not that I can recall.

Q. Now, when did you next hear anything about Swift & Company buying the Andalusia plant?

A. Why, Mr. Blutaw came in to see us one day, from Swift & Company.

Q. Who was Mr. Blutaw?

A. I dont know, I have never seen him since; he claimed he was connected with Swift & Company, from Chicago; said he had been down to Andalusia, and just came from there.

Mr. Horton: I object to that and move to strike it out, as hearsay.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr. Taylor) When was this Mr. Blutaw called?

A. The best that I can recall it was in the latter part of July, 1917.

Q. What did Mr. Blutaw say?

Mr. Horton: We object on the grounds previously mentioned. May it be understood that my objections go to this entire line of testimony?

542 Examiner Sadler: Yes. The objections will be noted.

A. Blutaw said that he had just come back from Andalusia, and he was on his way to Chicago; we asked him how everything was around there; he said everything was moving along in pretty fair shape. I asked him then what he intended to do about E. P. Allen & Company. He told us as far as he knew it would go along in the same manner in which it had been going.

Q. Well, now, what next happened, what next did you hear about the purchase of the plant by Swift & Company?

A. Why, along in August, I think, Mr. Rogers came in and said he was the manager, on his way back from a vacation, and introduced himself to us.

Q. He was manager of what?

A. Andalusia Packing Company.

Q. Was Swift & Company's name mentioned at that time?

A. Yes, he said he was on his way back from the home office, back from Chicago, on his way back to Andalusia. Mr. Allen asked him at that time what they intended to do with

E. P. Allen & Company. He said as far as he knew the arrangement was going to continue.

Q. You were present and heard this conversation?

Mr. Horton: I object to that, does not go to the issues
543 in this case at all.

Examiner Sadler: The objections will be noted.

Q. (By Mr. Taylor) What did you next hear with regard to the purchase of the Andalusia plant of Swift & Company, if anything?

A. The next we heard Swift & Company were getting the products from Andalusia and we were not.

Q. How did you hear that?

A. By not getting any products, and seeing one or two of their cars come in.

Q. Well, describe more in detail just what you did see and hear on that occasion?

A. Well, I saw a car of pork come in to Swift & Company from there, several days after we got our last shipment; then after that I saw one or two other cars.

Q. How did you know that it was Andalusia Pork?

A. Well, I was down there one day, in reference to some other matter, when Mr. White told me there was a car of Andalusia pork out there at his door.

Q. Who was Mr. White?

A. He was manager of Swift & Company at that time.

Q. Was Mr. Allen trying at that time to get pork and
544 other meat products from the Andalusia plant?

A. Why, just previous to that Mr. Allen made his last trip down there.

Q. Were you with him when he made his last trip down there?

A. No sir.

Q. Do you know what efforts Mr. Allen was making along about this time to get Andalusia meats?

A. Mr. Allen made a trip down there in September, latter part of September, and of course all I can tell is what Mr. Allen told me when he returned; he said—

Mr. Horton: I object to what Mr. Allen told him; furthermore Mr. Allen testified about this pretty well.

Q. (By Mr. Taylor): You know Mr. Allen went down about that time?

A. Yes sir.

A. Had you been getting all the meat you wanted up to the time Mr. Allen went down this time?

A. Oh, no; no sir, had not.

Q. Were you able to sell it in the same volume that you had been before?

A. We would have sold within sixty per cent of what we had gotten previously, along in January and February,
545 if we could have gotten it, if he could have gotten the pork at that time.

Q. Could you have sold as much meat as you could at the same season of the year the preceding year?

A. Yes, yes, we could have sold a lot more, times were better.

Q. Now, right there, you are talking about September, 1917?

A. I understood I was talking about along in from July up to September 1917.

Q. From July, 1917, to September, 1917, you compare that with what you had done the previous year?

A. No, we were not in the business the previous year. I think there had been more sold that year than the previous year, because times were better in Birmingham.

Mr. Horton: But I understood that you are comparing one year with another year.

A. No, I could not compare it, I was not here.

Q. (By Mr. Taylor): Does pork sell better at one season of the year than another?

A. Oh, yes.

Q. When, during what period of the year does it sell the best, and when is there the least consumed of it?

A. My experience has been that July and August have been the poorest months of the year on fresh pork.

546 Q. When does the sale begin to pick up?

A. October.

Q. October?

A. About October.

Q. About what percent are the sales of July and August compared with the sales of January and February, ordinarily?

A. Well, my experience has been that we have sold within eighty per cent in July and August of what we have sold in January and February.

Q. Can you explain this falling off during the months that you have mentioned?

A. Due to the hot weather; people dont want fresh meat, as they do in cold weather.

Q. And this falling off in July and August as against the heavy season is not more than twenty per cent?

A. Not with us it is not; I could not tell about anybody else.

Q. Now, take this particular year again; compare July and August in regard to the Andalusia products with January and February of the same year, that is, compare the January and February sales of Andalusia products with the July and August sales, about what proportion would they stand in?

547 A. You mean the fresh meat products?

Q. Yes.

A. I would have to refer back to my records on that.

Q. Have you got any records that you can refer to?

A. Yes.

Q. What months does your record cover?

A. From January, 1917, to including September, 1917.

Q. (By Mr. Horton): Just a minute, may I see your memorandum there?

A. You want to look at that? Sure.

Mr. Horton: I notice this is a little slip of paper written with a typewriter or an adding machine?

A. With an adding machine.

Q. (By Mr. Horton): With an adding machine. This was evidently made within the last day or two?

A. That was taken from my little record here, personal record book, that I have had laying in the drawer for the last three or four years.

Q. When were those records made?

A. Why, at the time we received the shipments.

Q. (By Mr. Taylor): Made by you?

A. Made by me personally, yes sir. Do you want to see that?

Q. Do you know that they are correct?

548 A. Yes sir, they are corredt.

Q. Now, Br. Bauer, referring to your black book, could you tell how much of the Andalusia meat you sold in the month of January, 1917?

A. 201,353 pounds.

Q. What kind of meat was that?

A. That was fresh pork and beef.

Q. How much was sold in the month of February?

A. 138,707 pounds.

Q. What was that?

A. That is the same, fresh pork and beef.

Q. Fresh pork?

A. And beef.

Q. And beef. And in the month of March?
A. 108,268.
Q. What was that?
A. It was the same.
Q. And the month of April?
A. 80,672.
Q. And the month of May?
A. 34,528.
Q. And the month of June?
549 A. 63,786.
Q. And the month of July?
A. July I have not got down here, added up, you have got the figures there. July, 16156, August, 28091, September 11172,
Mr. Horton: Pardon me, what was that September?
A. 11172.
Q. (By Mr. Taylor): And was all of that fresh meats?
A. Yes sir.
Q. Fresh pork and fresh beef?
A. Yes sir.
Q. Now, what have you sold subsequent to September, of the Andalusia meats, of the fresh meats?
A. Nothing.
Q. I say, what have you sold?
A. Why, what we have sold?
Q. You?
A. Oh, I have sold—
Q. Of the Andalusia meat?
A. Nothing, the last we received from Andalusia.
Q. Now, I call your attention again to the figures which you have just given, and I will ask you if you wish to revise your percentages with relation to January and February and July and August, as to the sales of the Andalusia meat which you made?
A. Oh, I dont remember testifying to the sale of An-
550 dalusia meat. You asked me in that question about how July and August ran with us in the sale of pork.
Q. I referred to Andalusia.
A. Oh, you referred to Andalusia?
Q. Yes.
A. Andalusia we sold all we could get; that is all we could get from them at that time.
Q. Is that the reason your sales fell off so greatly in July and August?
A. Yes sir, and also in May.

Q September?
A. Yes sir.
Q. And will you state again about what your percentages are, per cent of pork sales, that is, all kinds, with relation to those two periods, January and February, on the one hand, and July and August on the other hand, what E. P. Allen & Company can sell—
A. We can sell eighty per cent in July and August of what we sell in January and February.
Q. That is including all the kinds of prok you handled?
A. That is the kind we sell at the present time, the business we are in. We are in the brokerage business.
551 Q. That is, if you can get the goods.
A. That is if we can get the goods.
Mr. Horton: That includes all the houses you represent?
A. Yes.
Q. (By Mr. Taylor): You are speaking about fresh pork?
A. I am talking about fresh pork.
Mr. Taylor: You can cross-examine.

Cross-Examination by Mr. Horton.

Q. Mr. Bauer, from November, 1916, to September, 1917, was E. P. Allen & Company representing any other packers?
A. On fresh meats?
Q. Yes.
A. No sir, not on the fresh meats.
Q. Were you representing any other packers in other lines?
A. Oh, yes.
Q. What others?
A. Wilson Provision Company at Peoria, Illinois, and the Sinclair Sales Company, Cedar Rapids.
Q. And what class of meats did you sell for them?
A. Ham, bacon, lard, and provisions.
Q. By provisions you mean what?
552 A. Hams, bacon, dry salts.
Q. Are there many different kinds of dry salt meat?
A. Why, we only—practically the only sale here is dry bellies, dry salt regular plates, rib bellies, that is all.
Mr. Horton: I think that is all.
Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused, and we will take a recess.

(Whereupon a recess was taken at 10:35 A. M.)

After Recess

10:50 A. M.

Examiner Sadler: The hearing will come to order.

553 J. T. HACKNEY called as a witness for the Commission at Birmingham, Alabama, on March 10, 1921, after having been first duly sworn testified as follows:

(Pages 842-846)

That he was engaged in the retail business in the city of Birmingham handling fresh beef and pork as well as smoked and salted meats; that in about 1916 or 1917 he began to purchase meat products produced in Andalusia, Alabama from E. P. Allen & Co.; that he bought hams and bacon fresh pork products such as shoulder, loins and hams and probably a few pigs from E. P. Allen & Co.; that he began buying from them when they first started handling the Andalusia products, but did not remember how long he handled those products; that during the same period of time he also purchased products from E. N. Wood that were produced by the Moultrie Packing Company; that during that same period of time he bought fresh pork, hams and smoked meats from Swift & Co.

554 (Witness excused)

Mr. Taylor: Mr. Examiner, I at this time wish to have marked for identification the map of the state of Georgia which I here present, on which map appear crosses in blue pencil, marked on certain of the counties of the state. These blue pencil crosses were placed there by Mr. Vereen, just after the close of his testimony taken at Atlanta, Geor-
555 gia. This map also bears marks in red pencil on the map in the form of circles surrounding certain cities, which red pencil marks were placed on the map by Mr. Harrison as the time of his examination in Atlanta, as representing the cities in the state of Georgia in which Swift & Company have branch houses, is that correct?

Examiner Sadler: The map will be marked Exhibit A-21 for identification.

(The said map was thereupon marked "Exhibit A-21 for identification.)

E. B. ADAMS called as a witness, having been first duly sworn, testified as follows:

Direct Examination.

Examiner Sadler: What is your name?

A. E. B. Adams.

Q. Swift & Company, isnt it?

A. Yes sir.

Q. (By Mr. Haycraft): What is your occupation, Mr. Adams?

A. District sales manager, Swift & Company.

Q. How long have you held this position?

556 A. Since May 16, 1911.

Q. What was your occupation prior to that time?

A. Sales manager, Swift & Company, Atlanta, Georgia.

Q. You said 1911, didnt you?

A. Yes sir.

Q. Salesman for Swift & Company, Atlanta, Georgia, did you say, that was covering the Atlanta district, do you mean?

A. No, Atlanta branch house.

Q. Atlanta branch house?

A. Yes sir.

Q. How long had you been in that position?

A. I dont recall the exact date. The fall of 1908, I think.

Q. Prior to that time.

A. Sales manager, Savannah, Georgia.

Q. How long?

A. Approximately two years. It is pretty far back.

Q. How long have you been in the employ of Swift & Company all told?

A. Since October 1st, 1900.

Q. Now, do I understand that you have been district manager for Swift & Company since 1911?

A. Yes.

557 Q. During the years 1916 and '17, what was your district, what branch houses comprised your district?

A. You want me to name all the branches I have, the cities, the territory?

Q. You can name the branch and the city and state it is located in.

A. Well, Birmingham, Alabama; Gadsden—

Q. What?

A. Gadsden, Albany, Alabama; Anniston, Alabama; Huntsville, Alabama; Memphis, Tennessee; Greenville, Mississippi, Greenwood, Mississippi; West Point, Mississippi; Tupelo, Mississippi.

Q. How do you spell that?

A. T-u-p-e-l-o. Meridian—Montgomery, Alabama; Meridian, Mississippi; at that time I have—I had this southern territory that I have not got now. In 1916 and '17 I had some territory that I have not got now.

Q. What was that?

A. Jackson, Mississippi; Vicksburg, Mississippi; Baton Rouge, Louisiana; Donaldsonville, Louisiana; New Orleans; Hattiesburg, Mississippi; Mobile, Alabama; Pensacola, Florida.

Q. You have given us twenty.

558 A. Skipped one, then.

Q. Twenty, that is right.

A. 1916 and '17, yes, I think that is right; in 1916 and '17. We changed, added on and cut off.

Q. Now, when did that change take place, the first change after 1916 and '17?

A. At the end of 1917.

Q. About January 1st, 1918?

A. No, 1918, end of 1918.

Q. About January 1st, 1919?

A. Yes.

Q. Now, what change was it took place at that time?

A. Well, starting from here down—

Q. Meridian?

A. Meridian down, yes.

Q. Then what happened, division of your territory?

A. Yes.

Q. Somebody else given management of it?

A. Yes, split up.

Q. Then from January 1st, 1919, until date, what branches, did you have, did you have in your territory?

A. Well, we had those up until the present.

559 Q. Yes. Birmingham, Gadsden, Anniston, Huntsville, Montgomery, Albany, Alabama; Memphis, Tennessee; Greenville, Mississippi, Greenwood, Mississippi, West Point,

Missippi, Tupelo, Mississippi. Any others? Meridian, Mississippi.

A. August 1918, my recollection, we opened a branch house at Sheffield, Alabama.

Q. Now, then, who has charge of the district in which the Mobile, Alabama, and Pensacola, Florida, branches are located?

A. Mr. J. D. Carroll.

Q. And where is his office?

A. New Orleans.

Q. Now, directing your attention to the period during the years 1916 and 1917, when all these twenty branches were under your jurisdiction, will you state whether or not—first, will you state what products were sold through the various branches?

A. Fresh meats and provisions, produce.

Q. With no exceptions. You mean all branches handled the full line?

A. They all handled the same. Of course, smaller points handled very little fresh meats.

560 Q. How were the sales made? By that I mean did you have salesmen, or did people come to your branch houses and buy?

A. Both.

Q. Take Birmingham; how many salesmen did you have in Birmingham? In 1917.

A. I could not say exactly, approximately seven.

Q. Did they cover the city and surrounding territory, or did they—

A. City and suburbs.

Q. City and suburbs. Did you have any salesmen going out and covering the country towns, small towns?

A. Possibly had one.

Q. Gadsden, Alabama?

A. Number of salesmen?

Q. How many salesmen did you have in 1916 and '17?

A. Two, total.

Q. What did they cover?

A. Suburbs.

Q. City and suburbs?

A. Country territory.

Q. Country territory?

A. Manager worked the city.

561 Q. Anniston?

A. Well, we had a camp there; normally two; during

the camp, which my recollection the camp period was the latter part of 1917; we had possibly six or eight.

Q. Covering surrounding territory, I suppose, the two, the two that you had there normally?

A. Well, one covered surrounding territory, and one the city.

Q. Huntsville, Alabama?

A. Two.

Q. Would your answer be the same there as to Anniston, in regard to territory covered?

A. Yes, with the exception of the camp, of course.

Q. Montgomery, Alabama?

A. That territory has been changed considerably, too. We also had a camp there; normally four; two in the country and two in the city.

Q. Albany?

A. At that time, one.

Q. He did all the work, did he?

A. Well, the manager would go out and do a little.

Q. Some outside territory covered, was there?

A. He covered the outside territory.

562 Q. Memphis, too—but wait a minute, now; strike that. Mobile, Alabama?

A. Four. Two city and two country.

Q. Pensacola, Florida?

A. You understand I am giving you my best recollection on this?

Q. Oh, yes.

A. I would say four, two in the city and two in the country.

Q. Now, I show you a map of the state of Alabama, and I will ask you to take that red pencil, and mark each branch house.

A. You want to cover the southern, too.

Q. Yes, I want the—from this here—there is Pensacola, Florida; you can mark that also, on this map.

(The witness marked the map as directed.)

Q. You make a cross mark at Sheffield, so we will just know where it is.

A. I guess that covers all of them, doesnt it?

Q. Now, then, while you have the map before you, Mr. Adams, Will you indicate on it as best you can the territory covered by the Birmingham branch house by salesman?

A. I am not overly familiar with that.

Q. Make a mark on the railroads as far as you think the

salesmen travel, referring of course, to the period of 1916 and 1917 now.

563 (The witness marked the map as directed.)

Q. Now, connect those marks with a line, to give us an idea of the territory on the map.

(The witness marked the map as directed.)

Q. Now, then do the same with the Anniston branch.

A. I am giving you my best recollection on this.

(The witness marked the map as directed.)

Q. Connect up the marks that you have made.

(The witness marked the map as directed.)

Q. Now, the same for Gadsden.

(The witness marked the map as directed.)

Q. Now, Huntsville.

A. Cannot cover the entire territory, have to get another map.

Q. Cover the territory that appears on this map; that will be sufficient.

(The witness marked the map as directed.)

Q. Then would you mean by the indication you have made there that part of the Huntsville territory was in Tennessee?

A. In Tennessee, yes.

Q. Now, mark the branch house territory in Albany in the same manner.

564 (The witness marked the map as directed.)

Q. I notice you have included in the Albany territory the town of Sheffield.

A. At that time they were handling Sheffield.

Q. Now, will you mark the territory covered by the Montgomery branch house in the same manner?

(The witness marked the map as directed)

Q. Connect up those points in the same manner.

Mr. Horton: Now, I am going to object to the witness connecting up the lines he has made as requested by counsel, for the reason that it makes it appear that all the territory encompassed within the circle is worked by the respondent's salesmen, and as a matter of fact such is not the case. The salesmen simply work the railroad lines, not all the towns and villages and cities on the railroad lines.

Mr. Haycraft: Well, either direct examination or cross-examination will bring out that fact; it should not affect in any way the work that is being done now.

Mr. Taylor: Or the contrary, as the case may be.

Examiner Sadler: The objections will be noted.

Mr. Haycraft: Please connect up the marks.

Mr. Horton: I object to the witness connection it up;
565 I think you are asking the witness to do something which he should not be asked to do.

Mr. Haycraft: The examiner has ruled on the question.

Mr. Horton: I dont care what the examiner has ruled for that particular case.

Mr. Haycraft: I move that the witness be instructed to connect it up as requested.

The Witness: As I said at the beginning, we dont cover all this territory; dont cover all those towns.

Mr. Haycraft: Proper questioning will bring forth the facts, and I intend to continue this examination as I think best.

Examiner Sadler: If the witness has knowledge of the facts, and can connect them up, I wish he would do so.

Mr. Horton: Let me examine the witness, please.

Mr. Haycraft: Wait until I get through, please, until I get through making these marks, and then you can ask him any questions you want to.

Mr. Horton: My examination now goes to the point that the true facts are not being shown by making this circle, the think that you are now asking the witness to do.

Q. (By Mr. Haycraft): Well, go ahead, then.

Q. (By Mr. Horton): Mr. Adams, your procedure,
566 your method of procedure here has been to make a little red mark upon the railroad line, which I take it indicates the point at which your salesmen stopped and turned back, or turned over on some other railroad line?

A. That is considered the Montgomery territory; we did not always work these houses, did not always cover all of their territory, but this is alloted out to different points, different branch houses, points, that is my recollection of the allotments; I would not say that we worked fifty per cent of the entire territory; that is known as Montgomery's allotment.

Q. But is it correct that you have indicated upon the railroad with a little red mark the point at which your salesmen stopped?

A. Yes.

Q. Then you have proceeded to draw a line through these marks, around the town, to make a circle?

A. Yes.

Q. Now, is it true that your salesmen worked all of the territory inside of that circle?

A. No.

Mr. Horton: All right, you can go ahead.

Mr. Haycraft: Q. Now, can you indicate on this map
567 the territory covered by Mobile, or approximately — I notice you have covered the last branch house on this side.

A. My recollection of those points is pretty hazy; I dont recall this territory out here (indicating).

Q. Do you mean west of Mobile, on the Gulf, Mobile, and Northern? Northwest?

A. Northwest, yes.

(The witness marked the map as directed.)

Q. Connect up those in the same manner.

(The witness marked the map as directed.)

Q. Now, I notice sme territory between the Mobile territory and the Montgomery territory not covered by any branch house, so far as indicated. How do you account for that?

A. These territories have been changed a great many times in the last five years; for instance, this point of Selma, in the past five or six years, it has been handled by Montgomery, Meridian and Birmingham.

Q. You dont recall now just which territory it was in at that time, 1916 and '17?

A. My recollection at that time it was in Meridian, that is my recollection.

Q. Then what would be your statement in regard to the other territory in Alabama, west of the territories indi-
568 cated by your red pencil marks, and particularly up and down the western border of Alabama, that is not included in any of these?

A. Meridian, West Point.

Q. West Point, Mississippi?

A. West Point and Meridian, Mississippi.

Q. Do you recall the territory covered by the Pensacola branch at that time? I show you another map here, a map of Florida. Would you indicate on this map the territory covered by the Pensacola, Florida branch?

A. My recollection of those houses down there is pretty vague; I have not had charge of them for several years. They came up to Flomerton there.

Q. On the L. & N.?

A. Yes. I dont recall just how far they went west.

Q. East, you mean?

A. East, yes. I recall this point here.

Q. You say it went as far east as DeFuniak Springs?

A. I recall that point, that is on the L. & N.

Q. You dont recall this exact territory covered by the Pensacola, Florida, branch?

A. It is pretty hazy; the territory is badly scattered down there.

569 Q. Now, you stated at the time that Mr. Horton was cross-examining you in regard to this territory covered by the branches in Alabama that some of the towns on the railroads were not worked by your salesmen; how do you account for that?

A. Unprofitable; not enough business there.

Q. You mean by that that they never went there, or only went there intermittently?

A. Well, we would call occasionally; we would get some orders through the mail, you see.

Q. Through the mail?

A. Occasionally.

Q. How about the inland towns, did you ever get any mail orders from the inland towns in the territories indicated?

Mr. Horton: I object to the question as being too indefinite.

Examiner Sadler: The objection will be noted.

A. I could not say specifically.

Q. Well, would you say that there was any part of the state that was not covered by your sales organization in some way?

A. Yes.

Q. What part of the state would that be?

A. Well, it would take me—I could not answer the question—I know, have a general idea of these things, but

570 you understand I covered a pretty big territory, I am not right—for instance, possibly I may not get to Montgomery for a period of six months, and I dont know what is going on there when I am not there.

Q. Well, now, of course, I am speaking of the time, 1916 and '17, and I am asking, of course, for the sales policy of Swift & Company as promulgated by yourself. My question is as to that policy; whether any particular territory in Alabama which you knew was not covered at that time by the Swift sales organization?

A. I could not point it out; I would say that there were, but I could not point out the immediate towns in 1916; what we did in 1916; I did not follow these individual salesmen, you know.

Q. Well, you issued their instructions as to the territory they were to cover in a general way, didnt you?

A. Well, we have managers, you understand.

Q. Yes. Those managers worked under your instructions, did they not?

A. Well, as far as is consistent with telling them to go after business and get business, and make money; the territory that is unprofitable, why, we may pass it up tem-
571 porarily, that month or a couple of months.

Q. I understand, of course, Mr. Adams, that there might be places in the state in certain branch house territory that would be unprofitable that you would pass up from time to time; and might be places that are out of the way that could not be easily reached, but I am asking as to the sales policy of your organization, whether any particular part of the state of Alabama which you exempted and did not make any attempt whatever to sell?

A. No.

Mr. Horton: I move to strike out the answer upon the grounds that the sales policy is immaterial.

Examiner Sadler: The motion to strike will be noted.

Q. (By Mr. Haycraft): Now, Mr. Adams, I believe you were requested to bring some records this morning, the subpoena calls for monthly or other periodical statements showing sales of meat and meat products by Swift & Company through its branch houses in Birmingham territory for the years 1916 and 1917, 1918 and 1919. What records have you produced in answer to that subpoena?

A. Those there (indicating).

Q. How would you describe them, Mr. Adams?

572 A. Weekly sales and earnings.

Q. And by whom are these records prepared?

A. By our bookkeepers.

Q. Where?

A. At the various points.

Q. You mean branch houses?

A. Various branches.

Q. And what disposition is made of these records, how are they used after they are prepared by the branch house bookkeepers?

A. Well, they are sent in to Chicago, and a copy to me.

Q. Here in Birmingham?

A. Birmingham.

573 E. B. ADAMS, called as a witness by the Commission at Birmingham, Alabama, on March 9, 1921, after having been duly sworn, testified in substance as follows:

(865-872 891-990)

(Quote verbatim testimony—Page 847 to 864 where Mr. Horton addressed the Examiner as follows: "Mr. Examiner, May I examine the witness at this point as to the subpoena?")

Referring to record produced at the hearing stated the volume of fresh pork, smoked meats, dry salt and bacon meats and pure lard sold by Swift & Company through the branch houses of Swift & Company in his territory (Gadsden, Ala., Anniston, Ala., Birmingham, Ala., Huntsville, Ala., Montgomery, Ala., Albany, Ala.) during the last week in the months of March, June, September and December during the years 1916, 1917, 1918 and 1919; and for the years 1916, and 1917 of the branch houses located at Mobile, Ala., and Pensacola, Fla.; that the volume of fresh pork sold through the Birmingham, Alabama branch house during the year 1916, was:—1,553,644 pounds; that the total volume of smoked meats sold through the Birmingham, Alabama branch house during the year 1916, was:—850,740 pounds; that the total volume of dry salt and bacon meats sold through the Birmingham, Alabama branch house during the year 1916, was—2,062,159 pounds; that the total volume of pure lard sold through the Birmingham, Alabama branch house during
574 the year 1916, was:—937,999 pounds. That the total volume of fresh pork sold through the Montgomery, Alabama branch house during the year 1916, was:—318,365 pounds; that the total volume of smoked meats sold through the Montgomery, Alabama branch house during the year 1916 was: 645,476 pounds; that the total volume of dry salt and bacon meats sold through the Montgomery, Alabama branch house during the year 1916 was:—941,983 pounds; that the total volume of pure lard sold through the Montgomery, Alabama branch house during the year 1916 was:—285,217 pounds. That the total volume of fresh pork sold through the Huntsville, Alabama branch house during the year 1916 was:—12,961 pounds; that the total volume of smoked meats sold through the Huntsville, Alabama branch house during the year 1916, was:—220,585 pounds; that the total volume of dry salt and bacon meats sold through the Huntsville, Alabama branch house during the year 1916 was:—647,330

pounds; that the total volume of pure lard sold through the Huntsville, Alabama branch house during the year 1916 was:—433,542 pounds. That the total volume of fresh pork sold through the Albany, Alabama branch house during the year 1916, was:—13,966 pounds; that the volume of smoked meats sold through the Albany, Alabama branch house during the year 1916 was:—37,529 pounds; that the total volume of dry salt and bacon meats sold through the Albany, Alabama
575 branch house during the year 1916 was:—259,412 pounds; that the total volume of pure lard sold through the Albany, Alabama branch house during the year 1916 was:—102,694 pounds. That the total volume of fresh pork sold through the Gadsden, Alabama branch house during the year 1916 was:—143,619 pounds; that the total volume of smoked meats sold through the Gadsden, Alabama branch house during the year 1916 was:—208,642 pounds; that the total volume of dry salt and bacon meats sold through the Gadsden, Alabama branch house during the year 1916 was: 637,959 pounds; that the total volume of pure lard sold through the Gadsden, Alabama branch house during the year 1916 was:—727,479 pounds; that the total volume of fresh pork sold through the Anniston, Alabama branch house during the year 1916 was:—77,424 pounds; that the total volume of smoked meats sold through the Anniston, Alabama branch house during the year 1916 was:—133,839 pounds; that the total volume of dry salt and bacon meats sold through the Anniston, Alabama branch house during the year 1916 was:—570,324 pounds; that the total volume of pure lard sold through the Anniston, Alabama branch house during the year 1916 was:—599,395 pounds. That the total volume of fresh pork sold through the Mobile, Alabama branch house for the years 1916 was:—255,094 pounds; that the total volume of
576 smoked meats sold through the Mobile, Alabama branch house for the year 1916 was:—547,624 pounds; that the total volume of dry salt and bacon meats sold through the Mobile, Alabama branch house for the year 1916 was:—485,841 pounds; that the total volume of pure lard sold through the Mobile, Alabama branch house for the year 1916 was:—222,576 pounds. That the total volume of fresh pork sold through the Pensacola, Florida branch house during the year 1916, was:—121,306; that the total volume of smoked meats sold through the Pensacola, Florida branch house during the year 1916 was:—578,370 pounds; that the total volume of dry salt and bacon meats sold through the Pensacola, Florida branch house during the year 1916 was:—692,899 pounds;

that the total volume of pure lard sold through the Pensacola, Florida branch during the year 1916 was: 101,121 pounds.

577 C. B. McENTIRE called as a witness for the Commission at Birmingham, Alabama, on March 10, 1921, after having been first duly sworn testified in substance as follows:

(pp. 873-877)

That he was engaged in the retail meat business in the city of Birmingham, handling beef, pork, veal mutton and all lines of meats, fresh, smoked and salted; that from time to time for eight or ten years he had purchased fresh and cured pork and beef products from Swift & Co., including period from September, 1916, to the end of July, 1917; that during the time that E. P. Allen had account with the Andalusia Packing Company, he purchased fresh pork, loins, shoulder, ribs, hams and some cured meats from E. P. Allen & Co., that had been packed by the Andalusia Packing Company; that he purchased about $300.00 of such products from E. P. Allen & Co. during that period of time; that he bought such products from E. P. Allen & Co., as long as that concern handled the Andalusia account, and that after he could not buy those products from that concern any more he purchased some from Swift & Co. and others.

578 (Witness excused)

EDMUND N. WOOD called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Taylor.

579 Q. What is your full name, Mr. Wood?
A. Edmund N. Wood.
Q. Where do you live?
A. I live at Woodlawn.
Q. Birmingham?
A. Birmingham. Woodlawn, Woodlawn station, 5312 Third Avenue north.
Q. What business are you in?
A. Brokerage, merchandise brokerage.
Q. Does that cover meats?

A. Yes sir.

Q. Go back to January, 1917. What business were you in at that time?

A. I was in the brokerage business.

Q. Did you have an account about that time for the Moultrie Packing Company?

A. I secured it in January, 1917, secured the account for the sale of their goods in this district.

Q. All of their goods?

A. All of their goods; fresh meats, cured meats, and everything they packed.

Q. Now, did you make sales of any goods during the month of January, 1917?

580 A. I did.

Q. Can you state to what amount?

A. I could not state the amount, the tonnage, nor the probable amount of the sales; the only record I have is the profits earned on the sales, to be two per cent, and that in January amounted to, January sales were, profits from Moultrie amounted to $6.96. Now, I would have to figure to see what amount.

Q. Now, that was two per cent of the selling price of the Moultrie goods?

A. Yes sir.

Q. Did you say—that was what you sold during the month of January, is that correct?

A. That is correct.

Q. Have you made a search for your records showing the total and kind of meats that you sold?

A. No sir, I have no record of that?

Q. I say, have you made a search for your records?

A. Yes sir, I have searched all my papers through, all my files. In moving our business from the one at that time —I moved my office twice, and the last time the files were carried back in some old rubbish, and I had not had time to hunt them up, and they were destroyed without my knowledge.

581 Q. And that included the papers and records of the amount of meats and kinds of meats that you sold for the Moultrie Packing Company?

A. Yes sir, they were in those files that were destroyed, giving the total and the amount of sales; and then monthly they rendered me a statement of the total amount, total amount of sales, and paid me my commission.

Q. And those statements are what were destroyed?

A. Yes sir.

Q. Now, these accounts—these records—this record that you have before you, what is that?

A. The record that I have before me is the profits earned from brokerage from my different accounts, various accounts, including the Moultrie Packing Company, what they paid me.

Q. And these records are in a book?

A. Yes sir.

Q. And were these entries here made by you?

A. They were.

Q. When?

A. At the time the check was received for my brokerage.

Q. Do you know that they were correct at the time that they were made?

582 A. Yes sir.

Q. Do you know that they were correct at the time they were made?

A. Yes sir, I do.

Q. Now, turn to the month of February, 1917, can you state what your brokerage was on the sale of Moultrie products for that month?

Mr. Horton: Just a minute; let me get my objection in; we object on the ground that is not within the issues in this case; on the ground that is immaterial, it is incompetent, and that it is secondary evidence.

Examiner Sadler: The objections will be noted.

Mr. Horton: And may it be understood that my objection continues to this entire line of testimony?

Examiner Sadler: Yes.

A. $38.68.

Q. (By Mr. Taylor): Now, take the month of March, 1917, what was your brokerage during that month?

A. March?

Q. Yes?

A. $92.62.

Q. 62 or 69?

583 A. 69 cents, beg pardon; $92.69.

Q. That is on the Moultrie products?

A. Yes sir, the amount on the Moultrie products.

Q. Well, at the same rate of percentage, two per cent?

A. Two per cent.

Q. Two per cent of the sales price of the product?

A. I believe two. They were paying me two and a half per cent, Jones & Lamb, another provision account, paid two,

but I think Moultrie paid me two and a half, I am pretty sure they did.

Q. Would two and a half be the considered per cent, then, as to January and February sales, March?

A. Yes sir.

Q. And all of the months that you name hereafter?

A. Yes sir.

Q. Now, turn to the book, the month of April, what was your commission on Moultrie products that month?

A. $194.53.

Q. And the month of May, 1917?

A. $185.86.

Q. And the month of June, the same year?

A. $116.33.

584 Q. And the month of July?

A. $36.12.

Q. And the month of August?

A. $11.82.

Q. And the month of September?

A. $5.66.

Q. And the month of October?

A. $44.12.

Q. And the month of November?

A. Well, we closed out, that is, they stopped my sales after October; I had notice from them that they had disposed of the account, and that I was not to represent them any more.

Q. Have you got that notice?

A. No sir, that was lost in my files. It occurs to me that I had two letters from them; I think I had one in July, stating that they were—something to the effect that they were about to close out their business to Swift & Company, and at that time my sales began to drop off, you know, could not get the goods from them, that is the reason there is a falling off in my sales.

Q. Do you mean by saying that your sales fell off that you could not make sales of goods?

585 A. Didnt have the goods. Reported that they could not supply me with the goods.

Q. Well, could you get—

A. I did get the orders, but I could not get the goods.

Q. And what did you do with the orders when you got them?

A. The orders I turned in to Moultrie Packing Company.

Q. Were any of your orders unfilled?

A. They notified me that a lot of the orders, that they

didnt have the certain kinds of goods that I had sold; hence they could not accept or fill the orders; they only filled such orders as they had goods already on hand; they quit buying goods, and didnt have it on hand.

Q. Well, that is hardly responsive.

Mr. Horton: I move to strike it out.

Mr. Taylor: Yes, that is not responsive to anything I asked.

Mr. Horton: It is agreed that it is sticken?

Examiner Sadler: Do you want it physically stricken?

Mr. Horton: I want it stricken; move it be stricken.

Mr. Taylor: I consent to have it stricken.

Examiner Sadler: The motion to strike will be sustained.

Q. (By Mr. Taylor): Now, can you remember when it was you got this second letter that you spoke of?

586 A. I think as well as I remember the second letter was in September or October; that they had closed out to Swift & Company; hence they would not need my services any more, something to that effect.

Q. Do you know how much meat products from the Moultrie Packing Company were being placed in the market at that time?

A. You mean after—

Q. Just about the time—do you know who was selling them?

A. Yes sir, I know who had the account, Swift & Company. I made application to Swift to continue the sales of the Moultrie products, and they replied to me that they would dispose of them, or would sell them through their local plant.

Q. When was it you made that application?

A. Either October, some time in October, or the first of November.

Q. That was about the time when you were unable to get goods from Moultrie any longer?

A. At the time that they—that Moultrie notified me that they had been absorbed by Swift & Company; then I made application to Swift for the account.

Q. Do you recall who it was you saw and where you saw him?

A. Sir?

587 Q. Do you know, do you recall now who it was you saw representing Swift & Company, where it was you saw him?

A. No sir, I wrote a letter to Swift at Chicago, and then I talked with Mr. White, the manager for Swift.

Q. Here in Birmingham?
A. Local manager in Birmingham.
Q. When did you have this conversation with Mr. White?
A. It was some time in November, you know, I could not remember.
Q. Was it after you wrote the letter or before?
A. Yes sir.
Q. After you wrote the letter?
A. Yes sir.
Q. Did you receive a reply to the letter?
A. Yes sir. Did I receive a reply to my letter?
Q. Yes, to the letter that you wrote Swift & Company in Chicago?
A. Yes sir.
Q. Have you got that reply?
A. No sir, that was lost in the same lot of files that was destroyed in moving.
Q. Well, now, do you remember what that reply said?
588 Mr. Horton: I object to that as not being the best evidence, and also being immaterial.
Mr. Taylor: It is the best evidence if the letter itself is not in existence, Mr. Examiner.
Mr. Horton: Copies of it may be in existence.
Q. (By Mr. Taylor): Have you got any copies of that letter?
A. No.
Q. Did you ever make a copy of it?
A. Yes sir. Copy that I wrote him.
Q. Yes, but of the letter that they wrote to you?
A. Oh, no sir, not of that.
Examiner Sadler: The objections will be noted.
A. I filed it; put it in my files with the copy of the letters I wrote them.
Q. Now, what did that letter contain, as you can best recall at the present time?
A. It said that they notified me that we regret that we can not comply with your request, but we will—something to that effect—we will sell the products through our local plant at Birmingham.
Q. Was there a pretty good demand for the Moultrie products at the time you had them?
589 A. Yes sir.
Q. At the time you had the brokerage account?
A. Yes sir.
Q. Right up to the end?

A. Right up to the day I stopped, there was a big demand; the goods were not fancy; they were good and cheap.

Q. What class of trade did you sell them to?

A. Sold them to the best retail trade; I sold a few cars of stuff that I did not get, of fresh stuff, to the jobbing trade, especially one car, I can remember, of lard, that I sold Mr. Allen, I sold him two cars, E. P. Allen, that I did not get, and I sold Swift two cars of beef that I did not get.

Q. When was this you sold Swift the beef?

A. I sold him one car in April, and I sold him another one in May.

Q. Of 1917?

A. Yes sir.

Mr. Horton: I object to all that testimony and move that it be stricken out; it is apparent that the witness did not make sales, but that he merely took orders.

Mr. Taylor: Yes, we recognize the fact that it was merely orders.

590 Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Mr. Taylor: You can cross-examine.

Cross-Examination by Mr. Horton.

Q. Did you have a contract in writing with the Moultrie plant?

A. Sir?

Q. Did you have a contract in writing with the Moultrie plant?

A. I only had letters from them, giving me the account in Birmingham for the sale of their products; we had no written agreement outside of the letters; I made application by letter and they replied and gave me the account.

Q. There was not any time stated in that letter, was there, for which the account was to continue?

A. No sir.

Mr. Horton: That is all.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused; but later recalled by Mr. Horton for further cross-examination)

591 Mr. Horton: If there is no objection, I would like to bring out the fact that he represented some of these other packers in a brief way.

Mr. Taylor: There is no objection, but I am inclined to

think that he really did say that; that is the understanding that I got.

Q. (By Mr. Horton): In February, 1917, did you represent any other packers?

A. Yes sir, represented Jones & Lamb Company, Ferris & Company of New York.

Q. Anybody else?

A. No sir, no other packer; for other goods there I was.

Q. And did that representation continue through January, February, March, April, May, June, July, September, August, November?

A. With who?

Q. With Jones & Lamb and Ferris & Company?

A. Yes sir.

Q. You were representing them at the same time you were representing Moultrie?

A. Yes sir, represented them longer than I did Moultrie; represented Ferris for ten years before.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused)

592 After Recess.

T. E. HENDERSON called as a witness, having been first duly sworn, testified as follows:

Examiner Sadler: I believe your initials are T. A., arent they?

A. T. E.

Examiner Sadler: T. E?

A. Yes sir.

Examiner Sadler: Andalusia?

A. Yes sir.

Q. (By Mr. Taylor): Where do you reside, Mr. Henderson?

A. Sir?

Q. Where do you reside?

A. Andalusia, Alabama.

Q. What is your business?

A. Banking.

Q. Were you at any time ever connected with the Andalusia Packing Company?

A. Yes sir.

Q. In what capacity?

593 A. President.

Q. In effect you were one of the organizers of the company, were you not?

A. Yes sir.

Q. Will you please state which—just state very briefly the circumstances surrounding the organization of the Andalusia Packing Company?

A. The war came on in 1914 and reduced prices of all agricultural products in our country to such a point that our people could not pay us, the banks and merchants and their creditors; we had heavy obligations, directly and indirectly; the boll weevil had made his first appearance—in a very limited way, however, in 1914; in 1915 in a very heavy way, and it was for the purpose of finding some other endeavor that a farmer could engage in by which he could pay his obligations that we decided to establish a packing plant, that he might grow hogs and sell them and realize some money from that source. As an illustration, I might say that normally cotton receipts in our town—in 1915—1914, first, were approximately 14,000 bales. In 1915 we had been reduced to about 2,000 bales, and it was a matter of life and death with us, financially, to find some line of endeavor, some pur-

594 suit that the farmer might follow that he could make a livelihood and live and pay his debts. Generally speaking, I would say that that was the cause of the building of this plant.

Q. I believe you said that you were one of the organizers of the corporation?

A. Yes sir.

Q. And were there a great many other subscribers and parties interested in the organization of it?

A. Some hundred and seventy-five to two hundred, I dont remember just how many; a large number of people.

Q. Who subscribed for stock?

A. Yes sir.

Q. Do you recognize this book which I hand you?

A. It seems to be the minute book of the Andalusia Packing Company; my signature is here somewhere; I saw it a few minutes ago, as approving the minutes as president.

Q. You have no doubt about its being the minute book?

A. I would not doubt it being the minute book; that is my signature there; that is mine.

Q. Signature as president?

A. As president.

Q. Signed at the end of the minutes?

595 A. Yes sir, that is mine; that is Mr. Darling's.

Mr. Taylor: The book which has just been identified by the witness as the minute book of the Andalusia Packing Company is the book that was marked "B" for identification" on February 9, 1921, at Chicago.

Q. Did you state about how many stockholders and subscribers there were to the certificate of incorporation?

A. I cannot remember at this time; there was probably one hundred and seventy-five or two hundred, more or less; there might have been more than two hundred or less than one hundred and seventy-five, but it was a very large number.

Q. Do the names appear here in the minute book, showing those stockholders and subscribers?

A. Well, I would assume so; I have got a list of the stockholders in my file here; all these people were stockholders in the packing house, in the packing company, that I see the names of.

Q. Now, about when did the corporation commence doing business?

A. The best I remember the corporation was organized in 1915, sometime the latter part of 1915; that is just a matter of off-hand recollection there. That is about right.

596 Q. What was that date?

A. The 8th day of October, 1915.

Q. Now, how soon after that did the corporation get to doing business?

A. Well, we began immediately to purchase equipment and make contracts for the buildings and machinery, and things of that kind.

Q. And when did you commence to purchase stock, hogs and stock to kill, if you can recall?

A. The best I remember it was in June, 1916, possibly in May; a few in May, either May or June, 1916.

Q. And will your records show about how many were purchased and killed, the records of the company?

A. For what length of time?

Q. Oh, beginning from June, about how the increase was?

A. Yes sir, the books ought to show; I didnt have anything to do with keeping the books at all.

Q. Did you have anything to do with the purchase of the stock?

A. Yes, I did.

Q. Did you know personally—

A. Yes sir.

597 Q. Can you state generally about how many were purchased and about how many slaughtered, how much slaughtering was done?

A. Well, to begin with, it was rather small; through the winter we had a good many, bought a great many hogs; then the spring and summer of 1917 it diminished considerably; I just cannot say as to the probably amount, what it would be, I know it took lots of money to pay for them.

Q. Can you state off hand about how much you were buying a month in the winter of 1916, '16 and '17, along in December December, and January and February and March of 1917, that was the heavy season, was it not?

A. That was about the heavy season.

Q. About how much a month was expended, if you recall —well, I withdraw that question, at least for the present. It is your recollection, is it not, that there was a large volume of hogs and cattle being slaughtered during the three months I just mentioned, December, 1916, January and February, 1917?

A. That is true as to hogs, but not true as to cattle; we did not buy very many cattle.

Q. Now, what did the corporation purchase at that time, taking it from the standpoint of the character of meat
598 which was produced, turned out, rather the kinds of meat which was turned out?

A. You mean different kinds?

Q. Yes.

A. Dry salt meats.

Q. Yes.

A. Sweet pickled meats, smoked meats, fresh meats, of all different cuts of the hog. Of course I dont suppose it is necessary to go into the different cuts of the hog?

Q. No.

A. Fresh meats, dry salt meats, and smoked meats.

Q. And hog trimmings, did you have trimmings?

A. Yes sir.

Q. Pig tails, ears, all that sort of thing?

A. Yes sir. Then the inedible department; tankage department.

Q. And what was the selling organization of the Andalusia Packing Company?

A. The selling organization consisted of probably three or four brokerage houses, together with, I think, two or three men that we traveled, together with our office salesmen.

Q. These brokerage houses J. W. Clark and Company,
599 of Atlanta, one?

A. Yes.

Q. One was E. P. Allen of this town?

A. Birmingham.

Q. Birmingham. Do you recal lany other broker?

A. We had one at Norfolk, Virginia, Oliver Wynn, best I remember; did some business with him; we sold some inedible stuff through some other brokers; I dont remember—I remember the appearance of one of them; he was about as broad as he was high; that we sold some grease too, sometimes.

Q. Where was he located?

A. I cannot remember. And we sold a car of pigs, I believe, to Libby, McNeil & Libby, of Chicago, through Taylor Brothers, brokers, that is one transaction, as well as I remember.

Q. Where are Taylor Brothers located?

A. Chicago.

Q. Did you sell anything in New York, as far as you can recall—well, I will withdraw that question; the books will show that better.

A. Yes.

Q. Now, going to the salesmen; who were they and what territory did they cover?

600 A. You mean out of the office?

Q. Yes, out of the office of the Andalusia Packing Company.

A. I cannot remember the names now, who represented us.

Q. Do you remember just how many of them there were?

A. I think we had two; and then we had selling arrangements with the Sessoms Grocery Company of Andalusia, who traveled two men, and they sold our products in connection with theirs.

Q. Take your own agents, what territory did they canvass?

A. They covered a territory south of Montgomery, and north of Mobile; they did not go into Pensacola; they did include Troy and Dothan, Brundage, Ozark, Greenville, Evergreen, Century, Florida, and a limited territory in our own section.

Q. Dd you sell much in Pensacola?

A. We might have—we sold probably a little stuff in Pensacola, not much.

Q. Now, take the Sessons Grocery Company of Andalusia;

do you know what territory was canvassed by their salesmen?

A. Their territory was from Andalusia to Graceville, Florida, and from—

Q. What railroad was that on?

A. L. & N. And from Chipla Florida, back to Cressview, Florida, I believe, was about the territory they covered, 601 small territory.

Q. Now, coming down to June, 1917, do you recall the first meeting you had with anyone representing Swift & Company?

A. Yes sir.

Q. Will you please state the time and circumstances of that meeting?

A. Well, the exact date I could not give you, it was the latter part of May or early June, was the first time I ever saw anyone or talked with anyone.

Q. And who was it you talked with then?

A. I talked with Mr. Hunter and Mr. Carr, H. C. Carr, I dont know Mr. Hunter's initials.

Q. Well, will you please state the exact circumstances of your meeting with Mr. Hunter and Mr. Carr?

A. I got on the train at Montgomery one morning to go to Andalusia, and went up in the smoker; there were two other gentlemen sitting up there; I read my paper, and they were carrying on a conversation; I never found out what, didnt pay any attention to it, did not listen. About the time or beyond Red Devil, about fourteen miles this side of Andalusia, one of these gentlemen got up out of his seat and came back to where I was sitting. He asked if this was Mr. 602 Henderson; I told him I was; he asked if I was from Andalusia; I told him I was; he asked if I was connected with the Andaluisia Packing Company, if I was the Mr. Henderson who was connected with the Andalusia Packing Company; I told him I was; he introduced himself; said he and his friend up there were going to Andalusia to pay us a visit, which had been their custom.

Q. It was their custom to pay you a visit?

A. That was their general custom, to go around and visit all the different packing houses; all the other packers had had representatives there from time to time. I think all of them had been represented there; I paid very little attention to it. And we talked about the packing industry and the country generally on to Andalusia. We got to Andalusia, and I suggested to them that if they—that they might

want to leave their baggage at the hotel, and that if they would kindly come up to the bank I would be glad to drive them out to the bank—out to the packing house, I mean; that I would like to drop by the bank to see if there was anything important there that needed my attention. They came on up to the bank in probably three or four minutes, and they rode out to the plant. They looked it over, and came on back to the bank; it was lunch hour; my wife was waiting for me,

603 and I suggested to them that if they felt like it, to drop back after their lunch and spend the time until their train left. They did not indicate whether they would or would not, but they did come back after lunch, and we talked; had quite a long conversation about the packing business, and the ultimate growth of the hog industry in our section, territory which we covered, the probably number of hogs that would ultimately be grown; all those different questions, just along—I dont remember all that was said, quite a good deal during the conversation, however. Mr. Hunter asked me if we wanted to sell our plant. I told him that we had never thought about it, that we had never tried to sell it to anybody, that I anticipated that we might have trouble with some of our stockholders if we did want to sell or undertook to sell, but personally I had never had anything that I would not sell, provided it was agreeable to all the others. The conversation turned then to something else for a little while, and finally Mr. Hunter suggested that if we did decide to sell our plant to write Mr. Carr in Chicago. I told him that let's put it this way "If you gentlemen take a notion that you want to buy this plant you let me know," and the conversation stopped right there at that time.

604 Q. Now, in the course of this conversation about the hog condition in Alabama, the number that were being produced at that time, and the probably future of it, you made no representations that were not justified by the facts, did you?

A. No sir.

Q. And made no prophecies that you did not feel you were safe in making?

A. No sir, none that I know of.

Q. Now, did you hear from Mr. Carr later on?

A. Yes.

Q. When was that?

A. Probably in ten days to two weeks; it might have been as long as three weeks; I have no distinct recollection.

Q. In what way was it?

A. Wrote me a letter.
Q. Have you the letter with you?
A. No sir, I have not; I have not been able to find it.
Q. Do you recall what he said?
A. Well, he approached the subject by stating that—of course, this is just recollection—that if we wanted to sell our plant they would be glad to hear from us, or words to that effect; I dont know what was in the letter; I have not
605 got the letter; I dont know where it is, didnt pay much attention to it.
Q. You tried to find it, though, before coming here?
A. Yes sir.
Q. Now, did you reply to that?
A. Yes sir.
Q. Have you the reply?
A. That I made to his letter?
Q. Yes?
A. Yes sir.
Q. Is this the reply which you now hand me?
A. Yes sir.
Q. And this is a telegram?
A. Yes sir.
Q. Why did you answer by telegram?
A. On the assumption, I suppose, that his letter asked me to wire; not having the letter, I could not say why, as to that.
Q. What is your recollection with regard to the letter, in that respect?
A. My recollection would be that he asked me to telegraph him if we wished to dispose of the plant.
Q. Now, will you please read that telegram into the record?
606 A. "Andalusia Alabama, June 5, 1917, H. C. Carr, Union Stock Yards, Chicago, Illinois. Replying to your letter of the 1st, if will send representative your firm properly identified here this week will discuss matter with him in full. Signed T. E. Henderson."
Q. Now, did you receive a reply to that telegram?
A. Yes sir.
Q. Have you the reply with you?
A. Yes sir, received the reply the following day.
Q. Now, in lieu of offering the telegram in evidence, I will ask that it be read into the record; please read the telegram?
A. "Union Stock Yards, Illinois, June 6, 1917; 2:27 P. M. T. E. Henderson, Andalusia, Alabama, Will be Andalusia

Friday, June 8th on arrival morning train from Montgomery; wire reply to Chicago quick if agreeable you meet me your office Friday." Signed "H. C. Carr" Received at Andalusia 3:44 P. M.

Q. Did you reply?

A. I did.

Q. In what way?

A. "Andalusia, Alabama, June 6, 1917. H. C. Carr, Union Stock Yards, Chicago, Illinois. Will see you in my
607 office Friday morning the eighth." Signed, "T. E. Henderson."

Q. That was by telegraph?

A. Yes sir.

Q. What happened next in connection with this same matter, Mr. Henderson?

A. He came to Andalusia on Friday the eighth on the morning train, and left on the afternoon train.

Q. While he was there what happened, what conversation?

A. We went into extended conversation with regard to the plant; Mr. Darling being present. The final result of it was that we gave him an option, that is, we called it an option, it was not an option in a way; it was not binding; I have it here, copy of it.

Q. Who is Mr. Henderson whose name you have mentioned—who is Mr. Darling, whose name you have mentioned, Mr. Henderson?

A. Mr. Darling is president of the Sessons Grocery Company at Andalusia. He was a stockholder in the packing company, one of our largest stockholders, and a man that I conversed with freely about the affairs of the company, from time to time.

Q. Now, have you the option with you?

A. Yes sir.

Q. Which you referred to?

608 A. Yes sir, that is a copy of it.

Q. I see.

Mr. Taylor: I offer in evidence the option. In doing so, I ask your consent that the copy be substituted for the original?

The Witness: The original signed option is in the hands—we have not got it; this is a copy of the option that we gave.

Mr. Horton: We object to the introduction of the option, not upon the ground that it is a copy, but upon the ground that it is incompetent, irrelevant and immaterial, and not within the issues in this case.

Examiner Sadler: The objections will be noted; the option will be received in evidence and marked "Commission's Exhibit No. 111."

(The paper was received in evidence and marked "Commission's Exhibit No. 111, Witness Henderson, March 11, 1921.")

Q. (By Mr. Taylor): Now, Mr. Henderson, I see the last paragraph of the option refers to acquiring the remaining shares of the stock, and provides that the option shall not be binding upon you and Mr. Darling unless you are able so to do; will you please explain what that provision was inserted for? Whether any conversation was had with re-
609 gard to the insertion of that paragraph?

A. Well, the understanding was that if we sold these shares of capital stock to him, that we would deliver all the share of the stock, and while Mr. Darling and me were willing to sell our shares of stock at the price named; we were not willing to sell them at any price unless it was perfectly satisfactory with all the remaining stockholders to sell their stock at the same price.

Q. Well, now, did it subsequently develop that it was satisfactory to all of the remaining stockholders to sell their stock?

A. Yes.

Q. Was the stock sold at the price named in the option, $75 a share?

A. No, it was sold at $70 a share.

Q. At $70 a share. And turned over by all of the stockholders?

A. Yes sir.

Q. Were you personally present at the time the stock was delivered?

A. Yes sir.

610 Q. Where was that stock delivered?

A. Chicago.

Q. That is, the certificates?

A. Delivered in Chicago?

Q. Will you please describe the manner in which the certificates were gotten together and taken to Chicago and delivered there, if within your personal knowledge?

A. Well, as stated before, the sale resulted in the stock at $70 a share, and it took me some week or ten days possibly, to get all this stock together. It was assigned in blank to me and delivered to me in person by the various stockholders, and Mr. Darling and I made a trip to Chicago to make personal

delivery of the stock, in order that we might sign the new certificates that would necessarily have to be issued to new officers and stockholders, new stockholders.

A. At this time you were president of the company?

A. Yes sir.

Q. And Mr. Darling what?

A. Secretary.

Q. Now, when was this you went down to Chicago with all of this stock?

A. July 24, 1917, was the day we were there.

611 Q. You had the certificates of stock all there at that time?

A. Yes sir.

Q. All assigned in blank?

A. Yes sir.

Q. And did you deliver them?

A. Yes sir.

Q. To whom?

A. To point out the party personally that I made delivery to, I could not do that; there was several at the table, and we delivered the stock over the table to those there, but I could not say who picked them up.

Q. Where was this meeting place?

A. At Swift & Company's office in Chicago, their directors' room, I believe.

Q. At the stock yards?

A. Yes sir.

Q. At the Union Stock Yards in Chicago?

A. Yes sir.

Q. And can you state who was present at that time?

A. Mr. Peacock was present.

Q. Mr. Peacock, the present secretary of the Andalusia Packing Company?

612 A. I dont know whether he was or not; I think he was elected secretary that day, but I dont know whether he is now or not.

Q. Mr. C. A. Peacock, you mean?

A. Yes sir; Mr. H. C. Carr was present, so was G. H. Ingwerson and Mr. L. A. Carton was present, might have been somebody else, present, but I dont recall.

Q. Now, were new certificates issued on that day, Mr. Henderson?

A. Yes sir.

Q. And do you recall to whom they were issued?

A. I have a record here of to whom they were issued;

I assume it to be the record. T. E. Henderson, 100 shares, T. H. Ingwerson, 820 shares; G. D. G. Rogers, he was not present, a hundred; H. C. Carr, 820 shares; W. B. Taynor, 825 shares; total 2625 shares.

Q. That was the total outstanding capital stock of the Andalusia Packing Company at that time?

A. Yes sir.

Q. Now, I see a hundred shares issued to you; will you explain the circumstances under which they were issued to you, whether you were the beneficial owner or not?

A. After the details were all completed, and the stock
613 ready to be issued, Mr. Carr himself, I think, made the special request that I remain a director of the Andalusia Packing Company, and take the position of vice-president, in order that they would not lose the personnel of the organization, as it had been heretofore operated; that we could render them excellent service by the connection; they wanted our cooperation and aid, and to operate the plant as nearly as possible along the same lines as it had been operated under our own management, and for that reason I consented to have some stock issued to me personally.

Q. Was it stated by your or by Mr. Carr or by anybody that it would be necessary for stock to stand in your name to enable you to remain a director?

A. I made the statement myself that I was selling all of my stock, that I would not own any stock, and that I could not be a director nor an officer in that position. They suggested that they would issue the stock to me, and I replied by saying in that event I will assign the stock back to you, as I did not want any stock, did not want to buy any stock.

Q. Was there anything said about the number of shares?

A. No suggestion made as to the number of shares; they just wrote out the certificate for a hundred shares and
614 gave it to me; I signed it in blank and handed it back to them.

Q. Do you remember who you handed it back to?

A. No sir, I dont remember who wrote it or who I handed it back to; there was several around the table; it was impossible for me to remember that.

Q. Now, I call your attention to page 135 of the minute book, which shows the holding of a meeting, a special meeting of the board of directors of the Andalusia Packing Company at the northeast corner of Exchange and Packers Avenue, Chicago, Illinois on the 24th day of July, 1917, at four o'clock in the afternoon, at which there was present T. E. Henderson,

T. H. Ingwerson, H. C. Carr, and W. B. Traynor; do you recall if that meeting was held while you were there?

A. Why, I think the meeting was held.

Q. Do you recall at that meeting whether you resigned as president, and whether you were elected to another position?

A. Yes sir, I had the written resignation of all the directors and officers of the Andalusia Packing Company with me on that occasion.

Q. And did you tender them?

A. Yes sir.

Q. As shown by the minutes?

615 A. Yes sir.

Q. And were they accepted?

A. Yes sir.

Q. And you were elected then as vice-president of the company?

A. Yes sir.

Q. Now, I call your attention to page 138 of the minute book, and I will ask you to look that over and state if you recall such a meeting being held and being present?

A. Yes sir, it is my recollection that this meeting was held all right; I have got no record of it, you understand, at all.

Q. But you remember being present at such a meeting of the stockholders?

A. Yes sir.

Q. Now, turning to the last page of the meeting, you will see that there were resignations presented there of certain directors or former directors of the Andalusia Packing Company. I will ask you to read over that list and state whether or not that was all of the directors of the Andalusia Packing Company excepting yourself, at that time?

A. So far as I remember this is all of them; I dont remember.

Q. And then follows a motion, which was carried, elect-

616 ing T. H. Ingwerson, G. D. Rogers, H. C. Carr, and W. B. Traynor directors to fill vacancies created?

A. Yes sir.

Q. And that left yourself and these other four men all of the directors of the corporation at that time?

A. Yes sir.

Q. Is that your recollection, Mr. Henderson? Now, do you recall at the present time how long you remained vice-presi-

dent of the Andalusia Packing Company and a director of that corporation?

A. No, I cannot recall; it is not very long.

Q. Have you ever ceased to be vice-president or director of the corporation?

A. Well, I had a notice to attend a meeting of the directors to be held in Chicago at a certain time, a special meeting, that I did not attend; what was done at that time I do not know.

Q. Do you recall when that was?

A. It was in 1918, I think, some time, early in 1918, that is the recollection I have, nothing on it except recollection.

Mr. Taylor: I might state the last record in the minute book shows a special meeting of the board of directors
617 of the Andalusia Packing Company held on June 29th, 1918, at Chicago, which meeting appears as Number 49 in this proceeding. Have you ever received any notice that you had ceased to be a director or vice-president of this corporation?

A. None that I remember.

Q. Mr. Henderson, I show you Exhibit No. 17, Commission's Exhibit No. 17, and ask you to look at that and state whether or not you recognize that as a copy of a letter received by you?

A. Yes, I received that letter.

Q. And that is a letter from H. C. Carr to Mr. H. E. Henderson, dated June 28th, 1917?

A. Yes sir.

Q. I know. Now I show you Exhibit 18, which is a copy of a letter from T. E. Henderson to H. C. Carr, Union Stock Yards, dated July 2, 1917; I will ask you if you recognize that as a copy of a letter which you wrote to Mr. Carr?

A. It seems to be a copy, yes sir, of a letter that I wrote him.

Q. You remember writing that letter?

A. Yes sir.

Q. I now show you Commission's Exhibit 20, copy of
618 a letter from H. C. Carr to T. E. Henderson, dated July 9, 1917, and ask you if you recognize that as a copy of a letter which you received from Mr. Carr?

A. Yes sir.

Q. I see that that letter states that Mr. Matthies will go to Andalusia again to check up outstanding accounts. Do you recall that Mr. Matthies had previously been to Andalusia?

A. Yes sir, he was down there in June.

Q. What time in June, if you can recall?

A. Well, let me see; I think I can verify that; I should judge about the 18th of June.

Q. About when?

A. About the 18th of June, that he arrived there.

Q. You do not recall what he did on that occasion?

A. He wanted to verify the books and check up the inventory and generally to make an examination as to verify the statement of the assets that we had stated that we had, liabilities and so forth.

Q. In what form did you make a statement of what you had?

A. Well, we furnished them, the best I remember, a copy of our May 1st statement as to assets and liabilities.

Q. And he had that statement before him when he
619 checked over your assets?

A. Let me get that correct—I am not sure that he had a statement of the assets and liabilities; he had this statement here, I think, covering our fixed assets, building and equipment and it is very likely that he had a statement also that he—that we made up May 1st, 1917.

Q. Have you the statement of May 1st, 1917?

A. Yes sir.

Q. And did you have this statement when Mr. Matthies was first there?

A. Yes sir.

Q. Did you have any conversation with Mr. Matthies at that time as to what you had there in the way of stock on hand?

A. Well, we went over the entire stock, the entire matter of the stock on hand with him, and had him to verify our book figures on the stock.

Q. Did you give him all the infomration that you were able to at that time?

A. Yes sir.

Q. He asked you for all that you had?

A. Yes sir.

620 Q. All that was available?

A. Yes sir. What I mean by book statement was that this was a complete inventory statement made up by ourselves before any negotiations were ever entered into, at any time, and without any knowledge on our part that we would ever sell the plant, and of course, after May 1st, these negotiations began; what I mean by book statement was, he would take the

killing as a debit and the sales as a credit to ascertain the amount of stuff that he had on hand at his visit there.

Q. And by this you mean the statement of May 1st, 1917?

A. Yes sir.

Mr. Taylor: I offer in evidence the statement of May 1st, 1917.

Mr. Horton: We object to the exhibit for the reason that the exhibit was made long before the respondent had anything to do with this packing plant, and long before negotiations were opened, and should not be received as evidence against the respondent; and it is incompetent, immaterial and irrelevant, to the issues.

Examiner Sadler: The objections will be noted, and the statement will be received as evidence, and marked Commission's Exhibit No. 112.

621 (And thereupon the paper was received in evidence and marked "Commission's Exhibit No. 112, Witness Henderson, March 11, 1921")

Examiner Sadler: Recess until 1:30.

(Whereupon, at 12:30 P. M. Friday, March 11, 1921, the hearing adjourned until 1:30 P. M. of the same day.)

After Recess 1:40 P. M.

Examiner Sadler: The hearing will come to order.

Q. (By Mr. Taylor): Now, Mr. Henderson, in referring again to this statement of May 1st, 1917, Exhibit No. 112, did that state the true facts as far as you understand them, at the time it was made up?

A. Yes sir. The statement shows accounts payable, $42,349 07; $36,747.88 of this amount represents money borrowed, but it is not covered by note, the amount simply standing to the credit of the two parties to whom we owed the money. That would reduce that down to a little over five thousand dollars.

Q. Still that amount, borrowed amount, is an account payable?

A. Yes.

Q. So that the statement really is correct, with that explanation?

622 A. It did not represent stuff bought and unpaid for; it is money borrowed.

Q. Money borrowed instead of goods bought?

A. Yes sir.

Q. Now, did you have any further statements or information as far as you know, as far as you can now recall, at

the time Mr. Matthies first came to Andalusia, to check over the property and assets?

A. At the time he first came there?

Q. Yes.

A. Nothing except our books and records in the office, as far as I remember.

Q. I call your attention again to this letter of July 9, 1917, written by H. C. Carr to yourself, Exhibit No. 20, and the sentence, or rather, paragraph "Will have the representative check meats and stock as to condition." Was that done?

A. Yes sir.

Q. Now, the next paragraph reads "In regard to any liabilities not shown on your statement, this, of course, is something that cannot be checked up, and presume that you and your associates would have no objecting to giving a guarantee that there are no liabilities in excess of $250 not shown
623 on your statement." Do you recall what statement it was that that letter referred to?

A. It was a statement from which this statement—made up from this statement, I presume; I dont recall just now any other statement; if there is any other statement I dont remember it. Of course, they had a statement, but I have no copy of it; it was a verification of this, copy of this, I presume, made up, however, in a form similar to—made up similar to this right here; this is just a trial balance statement.

Q. What is the date on this trial balance statement?

A. That is April 30th.

Q. You are simply using this to describe the form?

A. Yes. This statement that he refers to may have been just a form like this, I dont remember.

Q. Or it may have been this statement, Exhibit 112?

A. Yes sir, it may have been that.

Q. But whatever it was, the substance of it would be the same as this statement Exhibit 112?

A. That would be my recollection.

Q. I have in my hands schedule A, which I will ask to be marked for identifidation, Mr. Examiner.

Examiner Sadler: It will be marked A-22 for identification.

624 (The paper referred to was thereupon marked Exhibit A-22 for identification).

Q. (By Mr. Taylor): Mr. Henderson, I call your attention to page 25 of this schedule marked A-22 for identification. Do you recognize that page?

A. Yes sir, I wrote that letter.

Q. That is a letter written by you, under date of October 10, 1917 to Mr. L. L. Bracken, secretary to the Federal Trade Commission?

A. Yes sir, I wrote that letter.

Q. Please look at the preceding page 24 and see if you can recall that the letter written by you at page 25 was in reply to a letter of which page 24 is a carbon copy?

A. I dont remember that I ever saw that letter; I wrote this letter right here, in reply to this section B, addressed to Andalusia Packing Company, September 24th, 1919; I had been out for two months.

Q. You were still vice-president of the corporation—

A. Yes sir.

Q. Were you not, at that time?

A. Yes sir, but I have no recollection of this letter.

Q. And your reply is written—

625 A. October 10th.

Q. Signed "Former president."

A. Yes. "Replying to your letter of recent date, addressed to the Andalusia Packing Company, in regard to the sale of this stock, in which you ask for further information, the reason prompting the sale or transfer"—B, is covered in this original letter, this letter here. I presume I only answered that part of it because that part of it was the only part in which I was called on to reply, having not been connected with the plant since July of the same year.

Q. Do you recall who called that to your attention, and asked you to reply to it?

A. Well, I would judge that Mr. Rogers, who was manager at the time, would probably have called it to my attention; if it was called to my attention in any way—I guess it was.

Q. You are replying to a letter addressed to the Andalusia Packing Company?

A. Yes sir.

Q. Under date of September 24th, are you not?

A. Well, I didnt state the date; "of recent date."

Q. Addressed to the Andalusia Packing Company?

A. Addressed to the Andalusia Packing Company in

626 regard to the sale of this stock, in which you ask for further information, the reason prompting the sale or transfer. That is B. That letter was written up to the bank.

Q. Do you recall now why you didnt reply to A, that is whether the stock or the property or both was purchased by Swift & Company?

A. No, I dont remember about that.

Q. By the way, going back to the time when you delivered the certificates representing the entire stock of the Andalusia Packing Company in Chicago, on the 24th day of July, 1917, did you at that time receive payment for those certificates?

A. Yes sir.

Q. And in what form was that payment?

A. Check.

Q. Drawn by whom?

A. Swift & Company.

Q. Do you recall now where it was payable?

A. Drawn on the Illinois Trust Company, the best I remember.

Q. To whose order was it drawn?

A. Drawn to Trammell E. Henderson, Alphonso C. Darling.

Q. That check was deposited in due course and collected?

A. Yes sir.

627 Q. Now, I call your attention to page 26 of this same schedule A, marked A-22 for identification, I will ask you if you recognize the initials signed to that letter?

A. I would regard that as being the signature of C. B. Colt; C. B. C., he was there at that time.

Q. Who was C. B. Colt at that time?

A. Mr. Colt was connected with the plant after we sold it; I really dont know; Mr. Conner might know.

Q. And the date of that letter is what?

A. The date of the letter is October 9th. In my letter of October 10, 1917, answering paragraph B of Federal Trade Commission's letter of September 24th, after reading letter signed by C. C. B. dated October 9, 1917, it is likely that I was only requested to answer that paragraph, that part of the letter of the 24th of September covered by paragraph B, the reasons prompting the sale and transfer.

Q. C. B. C. is the same C. B. Colt whom you identify as initialing this letter appearing as page 26?

A. This C. B. C. here to all appearances is the initials of C. B. Colt, who was connected with the Andalusia Packing Company at that time, as auditor.

Q. You know the signature of Mr. Colt, do you C. B. C?

628 Well, I am reasonably familiar with it. That looks like the initials as he usually signed them.

Q. Do you recall now that Mr. C. B. Colt showed you this letter of September 24th, from the Federal Trade Commission?

A. I would not say that he did or did not; I do not remember. He evidently showed me the letter.

Q. Now, I call your attention to page 29 of this same exhibit, A-22 for identification. Do you know the signature appearing there?

A. I never saw his signature in my life; never saw him write it in my life; I have probably seen his signature, but I never saw him write it in my life.

Mr. Taylor: Mr. Examiner, I ask that schedule B. which I here present, be marked for identification.

Examiner Sadler: Schedule B will be marked A-23 for identification.

(The paper was thereupon marked Exhibit A-23 for identification).

Q. (By Mr. Taylor): Mr. Henderson, I now call your attention to page 15, as numbered on the lower right hand corner of the schedule B, marked A-23 for identification, and I will ask you if you recognize the signature appearing on that page?

629 A. That is C. B. Colt's signature, the best I know it.

Q. And referring now to page 16 of the same exhibit?

A. Yes.

Q. Do you recognize the initials there?

A. C. B. C. yes.

Q. And that stands for whom?

A. C. B. Colt.

Q. Mr. Henderson, what does the letter which I now show you, what is it?

A. Want me to read it?

Q. No, just state what it is, generally?

A. Well, it is a letter from H. C. Carr in which he states here that Mr. G. D. Rogers expects to be in Andalusia Monday the 16th of July.

Q. You received that letter through the mails from Mr. Carr?

A. Yes.

Q. Now, did Mr. Rogers come to Andalusia?

A. Yes sir.

Q. As was stated the re?

A. Yes sir.

Q. When he arrived there did he present himself as manager of the plant, of the Andalusia plant?

630 A. He didnt present himself as manager at that particular time; subsequently, after we sold, he assumed managership; at this particular time he was only there in the

capacity of going through the business of the concern, along with Mr. Matthies and others that were there getting acquainted with the operating end.

Q. Do you recall about when it was that Mr. Rogers came to Andalusia. It states here that he is expected to be there on July 16th?

A. I presume it was about the 18th or 19th of July that he reached there; of course I have no distinct recollection, about it, except such as that.

Q. This says that he expects to be there on the 16th; is it your recollection that he got there at a later date than that says they expected him to?

A. Well, about the 16th.

Q. And did he take steps to familiarize himself with the plant and property, as the letter requested?

A. He did. We endeavored to comply with the letter, to show him all the courtesy possible, in meeting the people with whom we had business dealings, both buyers and sellers, and otherwise tried to get him as familiar with the business as possible.

631 Mr. Taylor: I offer in evidence the letter just identified by the witness.

Mr. Horton: No objection.

Examiner Sadler: The letter will be received as evidence, and marked Commission's Exhibit No. 113.

(The letter was thereupon received in evidence and marked Commission's Exhibit No. 113, Witness Henderson, March 11th, 1921.)

Q. (By Mr. Taylor): Now, Mr. Henderson, I call your attention to Exhibit 18, particularly to the last paragraph on the third page, in which you state in this connection: "I wish to state that we will require a guarantee from Swift & Company that they will assume to pay all of the obligations representing money borrowed as shown by list of such obligations attached to and made part of the purchase of the stock, and on which a number of our directors and indorsers guaranteed to these indorsers that these notes would be paid when due." Was that done?

A. Swift & Company did not guarantee, but I have in my file there a contract with G. F. Swift, Junior, signed in connection with this.

Q. Do you refer to Exhibit 50, of which this is a copy?

A. This a copy of the one which I have in my file; I

632 assume it is a copy, yes.

Q. Why was it that G. F. Swift, Jr. guaranteed that?

Mr. Horton: I object; it is not material, doesnt make any difference why it was. Mr. Henderson, I dont presume knows the workings of Mr. Swift's mind.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Of course, if Mr. Henderson knows; if he does not know, he is perfectly capable of saying so.

A. I can say that I do not know why it was that G. F. Swift personally signed the contract.

Q. (By Mr. Taylor): Was there any discussion of that question in your presence?

A. No discussion; I was anxious to get the matter closed up and get relief from the burdens that we were under; I was willing to accept it, Mr. Darling and I, with that guarantee, and we took it that way; they offered it to us and we took it.

Q. Mr. Henderson, when you ceased to be president of the Andalusia Packing Company, what became of the letters and files, books and papers of the Andalusia Packing Company?

A. They were left in the office where they were.

Q. Where they had always been, in the office of the Andalusia Packing Company?

633 A. Yes.

Mr. Taylor: You can cross-examine.

Cross-Examination by Mr. Horton.

Q. Now, Mr. Henderson, what was the character of your country down there, with reference to the principal industry, when this plant was started?

A. Cotton had always been our principal industry.

Q. It is primarily farming country, is it?

A. Yes.

Q. There are no important industries there except agricultural pursuits?

A. Agricultural pursuits, and it has always been more or less of a lumber district.

Q. But of late years the lumber has been pretty well cut off, hasnt it?

A. Yes, the lumber has been depleted very rapidly.

Q. And it is a farming country in the cut-over sections, is it not?

A. Yes.

Q. Was it your object to introduce diversified farming?

A. We had that in mind, yes.

634 Q. As I understand it, to have the farmers devote their industry to stock raising, so that if the cotton crop failed, there would be something to fall back on?

A. Well, we foresaw the failure of the cotton crop by reason of the boll weevil, the advent of the boll weevil; we were drowning, we were grasping at anything that came to save ourselves, that is about the best way I can put it; financially we were drowning; we were trying to protect ourselves.

Q. Now, did the packing plant accomplish your purpose?

A. It done a great deal more than we anticipated it would do.

Q. It has been a benefit to the community?

A. Yes, a great benefit.

Q. Does that apply both before and since Swift & Company have owned the plant?

A. Oh, yes, applied since we built it, and up to the present time.

Q. Now, with what success did you operate the plant, financially?

A. Well, I would like, in answer to that question I would like to give you two periods during our operation.

Q. In your own way.

635 A. We began in June, the best I remember, in 1916 to actually slaughter hogs; we never did kill very many cattle at all. On January 1st, 1917, our books did not show any profit of any moment, if any at all, and we did not feel very good. Due to an advancing market from January to May, however, and the application of the prices that the stuff was worth in May to our stock, and the application of the prices of our stock on January 1st, accounted for the suplus of profits as shown in this statement during our ownership of the plant.

Q. Referring to Commission's Exhibit No. 112, which shows a gross profit of $130,000; do I understand that that profit is the result of the increase if price of the stock that you had on hand between January 1st, 1917 and the date of the statement?

A. Well, using the net profit instead of the gross profit, I would say that the advance in the market accounted for practically all of that net profit from January to May; that is my best recollection, as I remember it.

Q. What is the net profit?

A. $62.646. We had a very large stock of goods on hand.

Q. Between January 1st, 1917, and the date of the statement you were carrying considerable of a stock of goods?

A. Yes sir.

636 Q. What did that stock consist of?

A. Of various products of the packing house, dry salt meats, sweet pickled meats, meats in the process of curing.

Q. Did you have a considerable stock of any particular kind of meats?

A. We had a big stock of sweet pickled meats, I remember, and dry salt meats, and dry salt shoulders.

Q. Were you have any difficulty in moving that kind of product?

A. We had considerable difficulty in moving this sweet pickled hams and those shoulders.

Q. And were they accumulating on your hands or otherwise?

A. They were accumulating.

Q. What was their condition?

A. Let me finish my answer to this other question: They accumulated to the extent of our having to turn our beef cooler into storage room for dry salt meats.

Q. Were they past the process of curing?

A. Oh, yes, they were all cured, ready to be sold to the shipper.

Q. It was meat which should have been marketed

637 in the ordinary course of business?

A. Yes sir.

Q. But which you were unable to move?

A. Well, we had been unable to move it, we had a good deal of difficulty in moving those shoulders, especially, and those hams that we had on hand.

Q. And as a matter of fact, the meat was deteriorating, was it not?

A. Well, I would not say so as to depreciation, except to keep the meat in, keep the ham in sweet pickle, it gets saltier, the saltier it gets the more you have to soak it to get the salt out.

Q. And the more you have to reduce your price in marketing it?

A. Yes.

Q. Now, what was the character of the hogs that you slaughtered down there?

A. Well, you mean as to hard or soft hogs?

Q. Yes?

A. Well, our hogs were soft hogs, more than ninety per cent of them were what is known as peanut fed hogs, and oily hogs.

Q. And that makes a soft hog, does it?

638 A. Yes.

Q. Now, are the pork products from that kind of a hog more or less valuable than the pork products from a northern or hard hog?

A. Well, that is a question that dan be answered two ways. The western hog is more acceptable to the saleman, the broker, and the butcher, but so far as the edibleness of the two hogs, my experience has been that one eats about as good as the other, as far as flavor is concerned.

Q. Is the difference in the character of the products reflected in the market price?

A. We always had to sell ours for less money than the western price.

Q. You have testified that you had a broker in Birmingham here; who was that broker?

A. E. P. Allen & Company.

Q. Did he sell some of your meat?

A. Yes.

Q. Did he get the same price for that meat that was received for hard western hogs?

Mr. Taylor: Oh, I object, Mr. Examiner; the direct examination did not touch upon the question of price.

639 Examiner Sadler: The objection will be sustained.

Q. (By Mr. Horton): How did your product sell on the Birmingham market as compared with hard northern hogs?

Mr. Taylor: That is objected to, Mr. Examiner.

Examiner Sadler: The objection will be noted.

A. My information was that our stuff was not bringing—

Mr. Taylor: One minute, Mr. Examiner, I wish to object to bringing out on cross-examination from this witness evidence which they should bring out in direct rebuttal by other witnesses, by witnesses who are competent to testify as to the facts they are called upon to testify; the witness here was not a salesman here in the Birmingham market; he had nothing to do with the selling of hogs here in this market, or canvassing the market; he did not touch upon this subject in his direct examination.

Examiner Sadler: Let the witness proceed; if it was not brought out in direct examination a motion to strike will be acceptable.

Q. (By Mr. Horton): I mean northern pork products?

A. We always sold our stuff for less on this market than the western products were bringing.

Mr. Taylor: I move to strike out the answer as outside
640 the scope of the direct examination, not proper cross-examination.

Examiner Sadler: The motion to strike will be sustained.

Mr. Horton: I submit that it is within the issues here presented within the direct examination; this witness has been allowed to testify to the fact that the pork products handled from the Andalusia plant brought less money than the same character of pork products from northern hogs. If allowed to pursue this line of examination, we intend to develop by the witness that the pork products from the Andalusia Packing Company were sold in the Birmingham market at a less price than the same character of pork products from hard northern hogs, that the extent of the variation would depend upon the market conditions here in Birmingham. That when the market was bare, and the products of the Andalusia Packing Company were in demand that a better price would be obtained, but that when there was a plentiful supply of hard northern products in this market, that the differential or spread would be widened, and that the Andaluisa products would sell for less money. We will further develop the fact that this pork was sold, E. P. Allen & Company, a broker in Birmingham, who represented the Andalusia Packing Company, frequently sold and almost always sold the Anda-
641 lusia products for less money than the market price on northern hogs of the same character.

Q. (By Mr. Horton): Mr. Henderson, is that the substance of what you would testify, if the questions were put to you to bring that out?

Mr. Taylor: That question is objected to, Mr. Examiner; I object to it being answered, and I wish to state that if counsel for respondent feels that the facts which he has just stated ought to be developed from this witness here, as a part of the defense in this case, it is entirely proper, I think, to attempt to bring it out by introducing the witness so the proper objections may be made to his questions as he asks them. Not cross-examination of the witness of the commission, who has not been asked any questions with regard to prices at which hogs were sold. Furthermore, yesterday we had here Mr. E. P. Allen, of Allen & Company, and also Mr. Bauer, a salesman, both of whom knew, and who would have been more proper witnesses than Mr. Henderson to have gone into that line of cross-examination, but he forebore from doing so at that time, I think very properly, and I submit that

it is not proper for him now to ask Mr. Henderson questions as to what hogs were selling for in Birmingham.

Examiner Sadler: The objection will be noted.

642 Mr. Horton: You may answer, Mr. Henderson.

Examiner Sadler: You make objection as to this answer?

Mr. Taylor: I make objection as to this answer.

Examiner Sadler: The objection to the answer will be sustained, as to this answer; I dont think the witness has a right to state in answer to the question as put.

Mr. Taylor: Counsel is really making this witness his own and by making a statement asking a very long leading question covering a great many other questions, and then asking for one answer in the affirmative or negative, which is manifestly improper, even as a question to his own witness.

Mr. Horton: I will make another statement in the record. Conferring with the witness Mr. Henderson, he informs me that that would be the substance—

Mr. Taylor: I object to this testimony being—

Mr. Horton: of his testimony.

Mr. Taylor: I object to counsel for the respondent testifying himself, and I move to strike out his testimony.

Examiner Sadler: The motion to strike will be sustained.

Q. (By Mr. Horton): Now, Mr. Henderson, you spoke about the plant running in season down there at Andalusia, just what did you mean by that?

643 A. Our section, you know, we have never got our farmers to raise their hogs throughout the year and market them evenly through the year; they market them like they always been accustomed to marketing the other crops, through the winter; we have a heavy season in the winter, and a light one in the summer.

Q. And the winter season extends during what months?

A. About November to the 1st of March or April.

Q. Then during the summer season it is light?

A. Yes.

Q. Was it your custom to operate the plant at all during the summer season?

A. Oh, yes, we operated all the time.

Q. But the receipts were very light in the summer?

A. Yes.

Q. Now, assuming that the Federal Trade Commission enters an order which requires Swift & Company to dispose of this plant, would that be an advantage or a disadvantage to your community?

Mr. Taylor: Mr. Examiner, I object to the question, not proper cross-examination, not a proper question, even to ask of his own witness.

644 Examiner Sadler: The objection will be sustained.

Mr. Horton: I will make another statement on the record.

Mr. Taylor. I object to any further testimony, Mr. Examiner, it is not in accordance with our procedure for counsel to testify.

Examiner Sadler: The objection will be noted.

Mr. Horton: If allowed to develop this line of testimony from the witness, we will show that it would be a disadvantage to the coimunity to have the ownership of this plant divorced from Swift & Company.

Mr. Taylor: I have a motion here which I ask to be ruled upon. I moved here—I asked that counsel for the respondent be not permitted to testify further upon the record, even under the guise of a statement or offer in evidence; it is not in accordance with our practice, and I ask for a ruling upon it.

Examiner Sadler: The motion to strike will be noted.

Q. (By Mr. Horton): Now after you got into the—or, first—Did you know anything about the packing business before you built this plant?

A. No sir.

Q. I would like to have you develop that thought further, follow down what your experience with that was?

645 A. Well, we went into the packing house business without knowing anything in the world about it, as I stated before, to try to save ourselves financially by diversification, and offering the people a market for their hogs. We were considerably handicapped in disposing of our products in various markets—the principal argument they made was the softness of the meats, the oiliness of our meats; we had no selling organization; we was not not large enough to go out and get an organization sufficient to dispose of our products in the different cities throughout the country, and had necessarily to rely on brokers in several places. We had our capital invested in plant and machinery, as our statement will reflect, possibly more; and necessarily had to borrow enormous sums of money for small people like we were.

Mr. Taylor: Mr. Examiner, I wish to object to any more of this answer at this time; it is going away beyond the scope of the direct examination.

Examiner Sadler: The objections will be noted.

Mr. Horton: Q. Did you finish your answer?

A. No.

Q. Go ahead.

A. And by reason of our inability to dispose of our
646 products as rapidly as we should have disposed of them, or as rapidly as they accumulated, our obligations maturing all the time, it made it rather burdensome on us to meet our obligations from time to time as they should have been met in a businesslike manner, and the fact—

Mr. Taylor: It is understood, is it, that all this latter part of his answer is over my objection?

Examiner Sadler: Yes.

A. (Continuing): The fact that a few of us were indorsers and guarantors and personally liable and responsible for the payment of the entire obligations of the company, the money borrowed, it made it rather heavy burden for the several individuals who endorsed all this paper, and we were under a very heavy load, and as a matter of fact, we were anxious to get from under it.

Mr. Taylor: Now, I move to strike out such portions of the answer as are made after my first objection.

Examiner Sadler: The examiner will sustain the motion as to the latter part. Motion to strike will be sustained.

Q. (By Mr. Horton): Did you find your method of merchandising through brokers satisfactory or otherwise?

A. Well, it could have been more satisfactory, but we
647 had to put up with it like it was.

Q. Did the brokers have any money invested in this product?

A. No.

Q. Did the broker have any other interest in the sale other than to get his commission?

A. No.

Q. And keep his account?

A. None.

Q. Now, I take it that this—I take it that when Swift & Company bought the assets from the Andalusia Packing Company that it was satisfactory arrangement all around, both to the buyer and the seller?

Mr. Taylor: We object to that.

Examiner Sadler: The objection will be noted.

A. It was with us; very satisfactory; I have never heard any complaint from them.

Mr. Taylor: I understood that this objection was sustained.

Mr. Horton: He said noted.

Mr. Taylor: I move to strike out the answer then; we have not talked about when Swift bought the property from the Andalusia Packing Company; there is nothing in the direct testimony on that; it is not mentioned until this
648 question on cross-examination brings it out.

Examiner Sadler: The motion to strike will be noted.

Q. (By Mr. Horton): Is the plant still operating down there, Mr. Henderson?

A. Yes sir.

Q. Never been closed up, has it?

A. No.

Mr. Horton: That is all.

Examiner Sadler: Is that all?

Mr. Horton: Yes.

Redirect Examination by Mr. Taylor.

Q. Now, referring to your satisfaction with Swift & Company buying the assets of the Andalusia Packing Company, in what way were you affected, to cause you to feel satisfaction, when the property of the Andalusia Packing Company was conveyed to Swift & Company, in March, 1918?

A. By reason of our limited financial ability, we were under a tremendous load to try to finance the property.

Q. Up to March, 1918?

A. Up to July, 1917.

Q. But no one is talking about that period. Mr. Hor-
649 ton asked you about the transfer of the property of the Andalusia Company to Swift & Company, not the transfer of the stock to the stock of the Andalusia Packing Company.

A. Well, I have no testimony in there; I am not testifying beyond July 24th, 1917.

Q. Will you please read the question and answer? Mr. Henderson pay attention very closely.

(Question and answer read as follows: "Q. Now, I take it that this—I take it that when Swift & Company bought the assets from the Andalusia Packing Company, that it was a satisfactory arrangement all around, both to the buyer and the seller?

A. It was with us, very satisfactory; I have never heard any complaint from them.")

A. I only attempted to answer that question insofar as it related to our sale to them of the capital stock, July 24th, 1917, and not beyond that date.

Q. So with your present understanding of the question, do you wish your answer stricken out?

A. Insofar as it refers to the sale of the property after July 24th, 1917.

Q. There was no other question asked you than
650 whether you were satisfied with the transfer of the physical assets of the Andalusia Packing Company to Swift & Company. Now, with your present understanding of the question, do you desire your answer stricken out, or do you wish it to stand?

A. When we sold the capital stock in 1917 to Swift & Company we were perfectly satisfied, and beyond that date I am not testifying, because I was not connected with it.

Mr. Horton: It was a purchase and sale between a satisfied buyer and a satisfied seller, so far as you know?

A. On July 24th, 1917, it was very desirable to us, and satisfactory.

Q. (By Mr. Taylor): Equally desirable and satisfactory to Swift & Company, so far as you know?

A. I dont know anything about whether it was or not, but they have never complained.

Q. They paid you a substantial premium on your stock, did they not?

A. They did not pay us quite book value for that stock at the date we made deliver.

Q. Just what would book value have been?

A. According to this statement, Exhibit No. 112, the book value would be $196,338.

651 Q. And how much did you get out?

A. $186,550.

Q. Par value of the stock was fifty dollars a share, wasnt it?

A. Yes sir, fifty dollars a share.

Q. And you got seventy dollars a share?

A. Seventy dollars.

Mr. Taylor: That is all.

Recross Examination by Mr. Horton.

Q. The difference between par value, fifty dollars, and what you got, seventy dollars, is accounted for by merchandise and other property on hand is it not?

A. The gross earnings over expenses, in other words, over that, it was profit.

Q. It was represented for the most part by inventory, fixtures, and buildings?

A. My recollection is that our books showed no material profit on January 1st, 1917, and due to an advancing market, and the application of the market price to the inventory of May 1st, we were able to show a profit as shown by statement of May 1st, marked Exhibit No. 112.

652 Mr. Taylor: Now, Mr. Examiner, I move to strike out the witnesses recollections, as we have the books present, and will endeavor to show by competent evidence what the facts were with regard to the matter about which the witness has testified from his recollections. Recollections as to figures are always more or less unsatisfactory, and when we are able to have the records, and the original sources, I submit that they ought not to be permitted to stand, recollections ought not to be permitted to stand.

Examiner Sadler: The motion to strike will be sustained.

Mr. Horton: What?

Examiner Sadler: Will be sustained.

Mr. Horton: Exception. That is all.

Mr. Taylor: That is all.

Examiner Sadler: The witnes will be excused.

(Witness excused.)

Examiner Sadler: Take a recess for ten minutes.

(Whereupon, at 3:20 P. M. the hearing took a recess until 3:30 P. M.)

After recess.

Examiner Sadler: The hearing will come to order.

653 THOMAS G. CONNER called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What are your initials, Mr. Conner?

A. Thomas G.

Q. Where do you live, Mr. Conner?

A. I am living at Andalusia.

Q. What is your business at the present time?

A. I am in the peanut business.

Q. Going back to the year 1916, what was your business at that time?

A. Was that the year that the plant was built—I mean sold in '17, wasnt it?

Q. Yes. That is, the stock was sold in '17.

A. '16, part of the year I was engaged in—I was superintendent of construction for the packing plant for the Andalusia Packing Company.

Q. What part of the year 1916 was that?

A. Well, it is from the first of the year until the time they began operations, I think some time in June.

654 Q. And then what was your occupation?

A. Well, I was manager of the plant as soon as it was in operation?

Q. From June on, how long were you manager of the plant?

A. Well, until July, 1917.

Q. I show you here a book marked B for identification, do you recognize that book?

A. It is the book that I looked over this morning.

Q. And what is it?

A. It is the minute book of the corporation.

Q. The Andalusia Packing Company?

A. The Andalusia Packing Company; I think there is some minutes in here that I did not make.

Q. Now, down to what period did you—did you keep that book for a time?

A. Yes sir, I kept it altogether.

Q. Down to what period?

A. Until the time that the transfer was made.

Q. Down to what period did you keep the book?

A. I think everything from there back until the time the transfer was made; I dont know anything about those minutes there.

655 Q. Down to the minute of a special meeting of the Board of Directors of the Andalusia Packing Company held in Chicago on the 24th day of July, 1917?

A. Yes sir.

Q. Everything in front of that. Now, do you know what was done with the minute book after you ceased keeping it?

A. Why, yes sir, it was turned over to Swift & Company, I dont know just exactly whether they were carried up there by Mr. Henderson and Mr. Darling, or whether they were shipped there. I had my instructions to turn in the minute book; they were first examined by their attorney, I forget his name.

Q. Mr. Fisher?

A. Yes, Mr. Fisher, and some certificates made out at his

suggestion, and then they were turned over to Swift & Company or turned over to Mr. Henderson; I dont know what he did with them.

Q. I understood you to say you received your instructions?

A. To turn them over to Mr. Henderson.

Q. From whom did you receive those instructions?

A. Mr. Henderson told me to turn them over to him.

Q. You said first turned them over to Swift & Company?

A.—Well—

656 Q. What caused you to say that?

A. Well, I had heard that they were sent to Chicago; that they had been turned over to the office.

Q. Of Swift & Company?

A. Yes sir, of Swift & Company.

Q. Who told you that?

A. I think Mr. Rogers told me that; there is a thing there that is not a minute.

Q. You referring to page 293?

A. Yes, that is a survey of a well there. They were looking for that; we made search for the minute book, and I was told it had been sent to Chicago.

Q. Mr Rogers told you it had been sent to Chicago?

A. Yes sir.

Q. To Swift & Company?

A. Yes sir.

Q. When was this conversation, as nearly as you can recall it?

A. I could not give the date of that, Mr. Taylor.

Q. It was after July 24th, 1917?

A. It was after November 1st, 1917.

Q. Who was Mr. Rogers?

657 A. He was manager of the plant at that time.

Q. Where did Mr. Rogers come from?

A. I dont know, sir.

Q. I show you Commission's Exhibit 113, letter from H. C. Carr to T. E. Henderson, and ask you whether the Mr. Rogers that you refer to is the same G. D. Rogers referred to in that letter?

A. The Rogers that I refer to was Mr. G. D. Rogers.

Q. This letter says Mr. Rogers would arrive in Andalusia on the 16th day of July, 1917, what is your recollection in regard to the time that he did arrive?

A. Well, about that time, he came about that time.

Q. And when Mr. Rogers arrived there, what did he do?

A. You mean in connection with the plant?

Q. Yes?

A. Well, he told me that he wanted to go over the organization and familiarize himself with it, and he did; spent several weeks at that.

Q. And what did he actually do there during that time?

A. Well, he was not active in anything for the first several weeks, he ultimately, though, became manager of the plant, took over the correspondence.

658 Q. Do you know whether he received a salary at any time from the Andalusia Company?

A. No sir, I do not. I know as a matter of fact that he did, but then, I dont know that I can say that I knew that he received it at any time, that is, at any specific time.

Q. Do you know when he commenced to receive the salary?

A. No sir, I do not.

Q. Do you know whether or not the books which are here will show when Mr. Rogers commenced to receive a salary?

A. No sir, I dont know whether that is on the books or not; I dont know anything—very little to do with the keeping of the books.

Q. Now, did you know Mr. C. B. Colt?

A. Yes sir.

Q. When did you first meet Mr. Colt?

A. Why, my recollection is that he came about the time Mr. Rogers did, or soon afterwards.

Q. Along about the 16th of July, 1917?

A. Yes sir.

Q. I show you page ten of the paper marked A-23 for identification; do you recognize the signature of that page?

A. I could not identify that positively; that is very

659 much like Mr. Colt's writing.

Q. Do you know Mr. Colt's writing?

A. Well, I never saw a great deal of it.

Q. Now, I show you page 15, is that Mr. Colt's signature?

A. I would say that it was.

Q. I show you page 16, are those initials Mr. Colt's signature, so far as the initials are concerned?

A. Yes sir, I would say that they were.

Q. Now please look again at page 10, would you say that is in the—is or is not Mr. Colt's signature?

A. I would say that it was.

Q. Now, what did Mr. Colt do when he arrived at Andulusia?

A. He was auditor.

Q. Did he arrive along with Mr. Rogers, according to your recollection, come in on the same train together?, the same day?

A. I dont remember whether it was exactly the same day, but about the same time.

Q. About the same time, and he became auditor?

A. Yes sir.

Q. What were the duties of the auditor, what did he do as auditor?

660 A. I dont know that I can answer that question, Mr. Taylor, as to what his duties were.

Q. Did he have anything to do with the keeping of the books?

A. Well, more to do with making up the reports, I think; that is, not with the individual ledgers.

Q. Do you know to whom he submitted these reports?

A. Why, they were submitted to the home office.

Q. You mean to Swift & Company in Chicago?

A. Swift & Company, yes sir.

Q. Do you know what these reports were? The character of the reports were?

A. Well, they were stock reports, collection reports, production reports.

A. About how frequently were they submitted?

A. Why, they had sometimes four weeks closing, sometimes five, that is all I remember particularly; there may have been other reports, but I dont recall.

Q. I now call your attention to page 9 of the schedule A, marked Exhibit A-22 for identification; whose signature is that?

A. I would say it is Mr Colt's signature.

Q. Now, I show you page 26, do you know whose signa-

661 ture that is, as far as the initials are concerned?

A. I think it is Mr. Colt's; I would say it is Mr. Colt's.

Q. That is C. B. C., that is Mr. Colt's initials as he signed it?

A. Yes sir, I saw him sign it that way.

Q. I show you page 29 of the same document; do you recognize the signature there?

A. No sir, I do not.

Q. Do you know Mr. Peacock?

A. No sir, I dont know Mr Peacock.

Q. Has he ever been to Andalusia, so far as you know?

A. Not to my knowledge, no.

Q. That was Mr. C. A. Peacock, the secretary of the Anda-

lusia Packing Company that we are referring to, at least, was secretary of the Andalusia Packing Company on January 11, 1918, when this letter was written?

A. I dont know of his ever having been there; he might have been there; without my knowing it.

Q. Now, how long did you remain in the employ of the Andalusia Packing Company?

A. Until about November 1st, '17.

Q. Do you know whether Mr Colt also received a sal-
662 ary from the Andalusia Packing Company?

A. Well, I did not sign the checks, I dont know whether he did or not; I suppose that he did; I was under the impression that he did, but then I dont know that he did.

Q. Who did sign the checks?

A. Mr Colt signed the checks; Mr Rogers signed the checks more or less, somebody else; there was three of them, I dont know who the third party was; I believe the cashier signed the checks.

Q. Mr Connor, I call your attention To Exhibit No. 74, is that your signature, this your signature here?

A. Yes, that is my signature.

Q. Did you write th at letter?

A. Yes sir.

Q. Will you please read the last paragraph of the letter and state what you mean by it?

A. "It is possible that even though party you mention may buy the plant, they may wish us to handle the account in the future as we have in the past."

Q. Who did you mean by "us"?

A. Management of the plant, the Andalusia Packing Company.

Q. By "Us" just who did you mean?

663 A. The Andalusia Packing Company, management of the Andalusia Packing Company. If I would be allowed to state, I can make that paragraph clear. We were advised that it was desirable that we remain with the plant, that is, the office force.

Q. That included yourself and who else?

A. Well, all of the—Mr Matthies was the man that was talking with us, and he made the statement.

Q. Mr Matthies of Chicago?

A. Yes sir.

Q. Of Swift & Company?

A. Yes sir; he made the statement that it was their desire that we all stay there; I dont remember just who was present;

my recollection is that Mr Davis and two bookkeepers and myself were present at the time; and he said that they wanted us to remain with the company. That letter was written in answer to a letter from Mr. Miller, and the purpose for that letter—I dont know, meant just exactly what it said, that is, as far as I was concerned; there is nothing definite about it at all; that was the impression that I was trying to convey.

Q. I show you paper marked K for identification; is that the letter to which you were replying in this Exhibit 74?

A. Yes, I would say it was.

664 Q. Do you remember receiving the original of this letter K for identification, July 12th, from J. W. Clark and Company, incorporated.

A. Yes sir.

Q. I now show you L for identification, letter from J. W. Clark and Company, dated July 20th, 1917, replying to your letter of July 16th. Do you recall receiving that reply?

A. Yes sir.

Q. Mr Connor, do you remember when the Andalusia Packing Company began to ship its products to the Swift & Company branch house for sale?

A. Why, I could not say that I recall the first shipment, but then, we made shipments to the Swift & Company branch house in the fall; I think I would be correct in saying in the fall of '16?

Q. 1917, you mean, dont you?

A. No sir, of '16.

Q. That is before the stock was acquired?

A. Well, I know, but we had accounts with Swift & Company; the books will give that.

Q. The books will give it?

A. Yes sir, there is an account over there; I refreshed my recollection by looking at that; I am quite sure that

665 we made sales to them in January of 1917.

Q. What branch house does the book show?

A. Well, there is some sales, I dont recall the dates, or just exactly when, but there was sales made to the branch house at Norfolk, the branch house at Montgomery, the branch house in Birmingham; I remember particularly the Norfolk and Montgomery branch houses; possibly some to the Pensacola branch house.

Q. Now, when did you commence shipping to these branch houses regularly?

A. Well, we shipped one or two cars a week to Norfolk after we began to ship at all.

Q. Now, take Birmingham, when did you first make shipment to the Birmingham branch house?

A. I cannot give the date.

Q. Was it while E. P. Allen was still broker?

A. Well, we made some shipments to Swift & Company while Allen was still broker.

Q. That was after the stock was acquired on July 24th, 1917?

A. No sir, prior to the time that the stock was acquired.

Q. You say you found the account in the ledgers to
666 that effect?

A. I said I was not quite sure about Birmingham.

Q. Will you please examine the ledgers and state the date when the shipment was made?

A. Now, with reference to which branch?

Q. Birmingham?

A. I did not keep that ledger.

Q. Do you find an account with Swift & Company in Birmingham in that ledger?

A. No sir, I dont find any, except about the time of the transfer of the stock, I believe the transfer of the stock was in July?

Q. July 24th, 1917.

A. Well, I find shipments in there on the 14th, 1917.

Q. Now, Mr. Conner, I call your attention to the first paragraph of the letter of July 25th, 1917, from the Andalusia Packing Company to J. W. Clark & Company, appearing as Exhibit 76, that letter was written by you, was it not?

A. Yes sir.

Q. Now, refer particularly—read the first paragraph.

A. All right, sir.

Q. Now, in that paragraph, by "branch houses", what
667 do you mean, the branch houses of Swift & Company?

A. The branch houses of Swift & Company, yes sir.

Mr. Taylor: You may cross examine, Mr. Horton.

Cross-Examination by Mr. Horton.

Q. Mr. Conner, you stated that you were manager up until what time?

A. I beg pardon?

Q. You were manager of the Andalusia plant up until what time, November, did you say, 1917?

A. I said I was with the company up to the first of November, 1917, yes sir.

Q. And with reference to your sales policy, and the method in which prices were made, was there any change made in the operations of the company after July 24th, 1917, to what had been done previous to that time?

A. No sir, I dont recall any marked changes.

Q. Went on in the same way?

A. Yes sir.

Q. Made your own prices?

A. Yes sir.

Q. Sold your goods to the best advantage?

668 A. Yes sir.

Q. Now, these shipments that were made to Swift & Company's branch houses, both before and after July 24th, 1917, were those sales?

A. Yes, they were sales.

Q. Each one of them was a merchandise transaction between a willing buyer and a willing seller?

A. As far as I know; I dont know; previous to that time the sales were made through brokers; after that time they were made direct, usually by phone.

Q. You mean previous to July 24th, 1917, they were made through brokers?

A. Through brokers.

Q. Are you sure about that?

A. Well, most of them were, the biggest bulk of our business; not all of them; some of them were made direct with the managers.

Q. Manager of the branch house?

A. Yes sir; Mr Curtus sometimes bought stuff himself from Montgomery, over the phone.

Q. Who was Mr Curtis?

A. He was manager of Swift's branch house in Montgomery.

669 Q. In Montgomery?

A. Yes sir.

Q. But in all cases these were sales?

A. As far as I know, yes sir.

Q. And the prices were agreed upon before the sale was made?

A. So far as I recall.

Mr. Taylor: He says they were made through brokers; the brokers would be the proper parties to know that, I submit.

A. They would submit the order to us before we would

confirm it, Mr. Taylor; we would agree on the price before we would ship our stuff.

Q. (By Mr. Taylor) That is, the brokers would secure the orders and submit the orders to you?

A. Submit it to us for confirmation.

Q. (By Mr. Horton) Where the sales were not made through brokers, it was a straight merchandise transaction between a buyer and a seller?

A. Yes sir.

Q. How did the price of your product compare with the price of a similar grade of product made from hard hogs?

Mr. Taylor: I object to the matter of prices being gone into on cross examination; it is outside of our direct examination.

670 Examiner Sadler: The objection will be sustained.

Mr. Horton: That is all.

Redirect Examination by Mr. Taylor.

Q. Mr. Conner, just when was it that you ceased to be manager of the Andalusia Packing Company, if you can state?

A. I could not answer that question specifically, because I worked out as Mr Rogers worked in.

Q. Yes. It was some time before you left, you felt that you had ceased to be manager, and Mr Rogers took charge, did he not?

Mr. Horton: The question is objected to, as leading.

Examiner Sadler: The objection will be sustained.

Q. (By Mr. Taylor): Will you please state more fully what occurred in regard to Mr Rogers assuming the duties which it was stated in this letter of July 11th by Mr Carr to Mr. Henderson—

A. Well, I will state it in my own way, Mr Taylor, and if I say anything that I ought not to, you stop me. Mr Rogers came in, and he told me he wanted to see how we had been running the plant; he wanted me to go on just like we had been going.

Q. That was about July 16th?

671 A. Yes sir, when he first came in. He and I worked at the same desk Previous to that time I had signed all of the checks, at that time; that is on the 16th of July—whenever the transfer was made—

Q. The 24th of July.

A. The 24th of July, the method of signing checks was changed, and he took that, assumed that duty.
Q. Yes.
A. And later on he assumed other duties.
Q. When did he begin to sign letters?
A. Well, he wrote letters, and I did, too, from the time that he came there.
Q. What was the character of these letters that he wrote?
A. Well, I dont know that I can answer that.
Q. To whom did he write such letters?
A. I could not answer that.
Q. Customers?
A. Well, he wrote some customers, I suppose, I dont recall.
Q. I show you here letter of September 13th, exhibit 86, letter to J. W. Clark Company, signed by Mr. Rogers, is it not?
A. It looks like his signature.
Q. And here is one of August 25th, also to J. W.
672 Clark Company, signed by Mr Colt, is it not?
A. I would judge that is Colt's signature, I have no recollection of the letters, though, either of them.
Mr. Taylor: I move to strike out the last part of his answer as not responsive.
Examiner Sadler: The motion will be sustained.
Q. (By Mr. Taylor). Now, do you remember any brokers that the Andalusia Packing Company had, aside from J. W. Clark Company in Atlanta, Georgia, and E. P. Allen & Company at Birmingham, Alabama?
A. Well, prior to the time that we had J. W. Clark Company, we made sales of one or two cars of fresh meat through Stanlin or Stanton, or some such name as that; the first we shipped; but we discontinued our brokerage arrangement with him. Then we had Oliver Wynn at Norfolk, and we made some sales through other brokers. I remember in particular Taylor Brothers in Chicago.
Q. Before you commenced selling through J. W. Clark & Company at Atlanta, you stopped selling in to Stanlin, did you not?
A. Yes sir, we only shipped one or two cars, I cannot remember sure which.
Q. It was not your policy to sell in any given town
673 through more than one broker?
A. Well, I dont know that we ever had any exclusive arrangements, I dont recall any.

Q. But the way it practically worked out, it was exclusive, wasnt it?

A. Yes sir.

Q. Mr. Horton: I object to that. It dont make any difference how it worked out.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I think it makes a lot of difference.

Examiner Sadler: The objection will be noted.

Q. (By Mr. Taylor) Now, did you have a broker in Norfolk, did I understand you to say?

A. Yes sir, there was a broker in Norfolk.

Q. Who was he?

A. Oliver Wynn.

Q. And the sales that you referred to to Swift & Company in Norfolk were made through that broker?

A. I could not be sure whether they were all made through him or not; some were.

Q. Do you know—are you sure that any of them were made not through him?

674 A. No sir.

Q. Now, how about the sales made at Birmingham, was that not made through Allen, E. P. Allen & Company?

A. I dont know.

Q. You dont know whether the first sale of July 14th was made through Mr. Allen or not, then?

A. No sir, I dont recall.

Q. Do you know whether the latter sales were made through Mr. Allen?

A. Well, I feel quite sure some were not.

Q. There was one there in August, the last one, I believe, on the account which you recently referred to?

A. I could not say whether it was made through him or not; I do not think it was.

Q. Do you remember when you discontinued selling altogether through Allen?

A. No sir, I do not. I suppose the account will show?

Q. How near can you fix the date, as you recall it?

A. Without reference to the record?

Q. Yes?

A. I could not fix it.

Q. Could not fix it at all?

675 A. No sir, not from my recollection.

Q. Was it before you left?

A. I could not say as to that.

Q. Now, before you left, your duties as manager were al-

most entirely taken over, if not entirely taken over, by Mr. Rogers, were they not?

A. Yes sir.

Mr. Horton: I object to that question as leading, and move to strike out the answer.

Examiner Sadler: The objection will be noted, and the motion to strike will be noted.

Q. (By Mr. Taylor) Now, will you please search back in your mind, and state as nearly as possible when your duties as manager were taken over entirely by Mr Rogers?

A. I have nothing in my mind to fix the time, Mr. Taylor, I could not say, some time between the time, though, that he came there, and the time that I left.

Q. Some time before you left?

A. Yes sir.

Q. And the process was gradual up to that time, would you say.

A. Yes sir.

676 Q. Up to the time—

A. Well, there was some duties that he assumed at once and there was others that I kept until I left there.

Q. What were the character of the duties that he assumed at once?

A. Principally those that had to do with the selling and disposing of the product, distribution of it.

Q. How soon was that after arriving?

A. I would say two weeks.

Q. What were the character of the duties that you retained to the last?

A. Buying.

Q. Buying of the stock?

A. Livestock, yes sir.

Q. Livestock?

A. Yes sir.

Q. Did you observe closely what Mr. Rogers was doing in regard to the duties which he took over, or was your attention principally directed to the things which were left for you to do?

A. Well, I didnt watch him particular; I dont know that I could say that I observed closely what he was doing; I
677 gave my attention to the things I was doing pretty closely.

Mr. Horton: Mr. Examiner, I submit that all this is improper redirect examination.

Examiner Sadler: Counsel for the respondent will be al-

lowed to cross examine the witness on the matters brought out here.

Mr. Taylor: This, Mr. Examiner, as I recall it, is apropos to questions brought out in cross examination by counsel for the respondent. He inquired of this witness what change in policy, if there was any change of policy of the sales department after the acquisition of the stock, and while this witness was still in the employ—all apropos of those questions.

Examiner Sadler: Counsel for the respondent will be privileged to cross examine on this line of testimony.

Q. (By Mr. Taylor) Now, isnt it entirely possible that Mr. Rogers may have made a great many changes in the policy of selling, of which you knew nothing, before you left?

Mr. Horton: I object to that; I dont care what the possibility was; the possibility was that he might not have sold anything at all.

Examiner Sadler: The objections will be noted.

Q. (By Mr. Taylor) You may answer.

678 A. Your question is that there might have been great changes without my being conversant with the changes?

Q. Yes, in the selling policy.

A. I hardly think so.

Q. Mr Rogers assumed charge of the selling policy the first thing he did, after arriving there, after a week or two?

A. Yes sir.

Q. You still had a great deal to do with taking care of the buying?

A. Yes sir; we were in the same office, however.

Q. You did not fell in incumbent upon you to watch Mr. Rogers and see what he was doing?

A. No sir, I did not.

Q. He was really representing the owners of the corporation, owners of the stock?

A. Yes sir.

Mr. Horton: I object to this method of cross-examination and argumentation.

Examiner Sadler: The objection will be noted.

Q. (By Mr. Taylor) Now, in speaking of changes of policy, change of selling policy, your answer you made—would you consider the changing from a broker to a branch house of Swift & Company a change of policy?

679 Mr. Horton: I object to that, your Honor; the matter speaks for itself; it is a matter from which different

minds would draw different conclusions. In the final analysis, it is a question for the court, not for the witness.

Mr. Taylor: This witness has been asked what he considered a change of policy. Now, I want to show what he means by a change of policy; it is a question anyone can—anybody can testify what he meant.

Mr. Horton: It is a point tat I contend is for the court, and not the witness. It is a question for the Commission.

Mr. Taylor; It is a question that nobody but this witness can testify.

Examiner Sadler: The objections will be noted.

Mr. Horton: We except.

Q. (By Mr. Taylor) You may answer.

A. My answer is that there would be a change of policy in so far as you were changing it from one individual to another, but as my understanding, both the branch house and the broker is on its own base, that is, on its own merits, and to that extent I would think that it would not be a change of policy.

Q. Would not be so far as the Andaluisia Packing Company was concerned?

680 A. Yes sir.

Mr. Taylor: That is all.

Recross Examination by Mr. Horton.

Q. Then I understand you, Mr. Conner, to say that the change from a broker to a branch house is just simply changing your selling agency?

A. Yes.

Q. Changing your method of distribution; goods reached the same consumers?

A. Yes sir.

Q. Now, in regard to Stanlin at Atlanta, you say you shipped two cars of products to him?

A. One or two cars; my recollection is two cars; there may have been three, just a few cars.

Q. Were the results of those shipments satisfactory or otherwise?

Mr. Taylor: Oh, that is objected to.

Examiner Sadler: The objections will be noted.

A. Well, we considered that we had not got full returns from our shipments.

Q. What is the proportion of the returns that you got,

or, rather, what portion of the price of the product did
681 you get?

A. They were sold from half to two-thirds of the consignment price.

Mr. Taylor: Now, do I understand my objection holds good to all this line of questions?

Examiner Sadler: Yes.

Mr. Taylor: Nothing in the direct examination about this matter at all.

Q. (By Mr. Horton) What was the relation to the consignment price, of the consignment price to the market price?

A. At that time?

Q. Yes, at the time it was made, at the time of the sale?

A. What market price?

Q. Well, either the price on the Atlanta market, or the price on other corresponding markets.

A. I dont know, Mr. Horton, the shipments were made and the prices authorized by Mr. Brooks, who had charge of the opening of the plant; this was the initial shipment, and we had no prices at that time.

Q. This was made about the time the plant opened?

A. Just the first shipment, yes sir.

Q. Was it customary to make this consignment price
682 at or about the equal of the market price?

A. What market?

Q. General market, or the nearest and best market.

A. Why, we generally scaled the market price on our products, that is, the quoted market.

Q. Your market price would be a little less than the quoted price?

Mr. Taylor: Oh, I object to this, Mr. Examiner.

A. Yes sir.

Mr. Taylor: We are wandering off into byways, and getting away away from the subject.

Examiner Sadler: The objection will be sustained.

Q. (By Mr. Horton): Then to come back to the original proposition, I understand that your returns from the Stanlin shipments was about one-half to one-third under the—

Mr. Taylor: This cross-examination about the Stanlin shipment is all objected to; if the witness is permitted to answer at this time by the examiner, I would like to first ask a question of the witness.

Mr. Horton: Let me finish my question there, will you please? Please read it as far as I went.

(Question read.)

683 Q. (By Mr. Horton; continuing): one half to two-thirds of the market value of the goods?

A. Yes sir.

Mr. Taylor: That is objected to, Mr. Examiner.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: I would like the opportunity to ask the witness a question apropos of this, if I am permitted.

Examiner Sadler: Any objection?

Mr. Horton: No objection to Mr. Taylor asking a question, no.

Q. (By Mr. Taylor): The record of the shipment to Stanlin was kept in the ledgers of the Andalusia Packing Company, was it not?

A. The ledgers that were in use at that time, yes sir.

Q. And the ledgers are now here, are they not?

A. No, sir.

Q. And you are testifying then, entirely from your recollection?

A. Yes sir.

Q. How long did this transaction take? How long ago was it?

A. I don't know, about four or five years ago.

Mr. Taylor: I move to strike out all of the testimony
684 on cross-examination about the Stanlin account, or about the returns from the goods sent to Stanlin.

Examiner Sadler: The motion to strike will be noted.

Mr. Horton: I think that is all.

Reredirect Examination.

Q. (By Mr. Taylor): Mr. Conner, do you know the arrangement that was inaugurated after July 24, 1917, whereby goods were shipped to the branch house of Swift & Company, how those goods were paid for, how they were settled for?

Mr. Horton: I object to that as not being within the scope of the direct examination; this is not only redirect, but it is reredirect.

Mr. Taylor: Yes, but you brought it out on cross-examination, whether there has been any change in the policy of selling, that is apropos of that line of questions.

Mr. Horton: Oh, that was two or three hours ago.

Examiner Sadler: The objection will be noted.

Mr. Horton: Furthermore, I wish to add a further objec-

tion; it is immaterial as to how they were paid for; the fact remains that it was a purchase and a sale; payment is only incidental.

Mr. Taylor: Well, let's see what were the exact facts,
685 so the court can decide whether it was a purchase or sale or what it was.

A. My recollection is that all sales made to the branch houses were billed to Swift & Company, Chicago, and credit taken.

Q. Credit taken by whom.

A. By the Andalusia Packing Company.

Q. By the Andalusia Packing Company?

A. Yes.

Q. Do you know how the branch house paid for the goods that they received from the Andalusia Packing Company?

A. Yes sir.

Q. Do you know whether they ever paid since July 24, 1917, whether they ever paid the Andalusia Packing Company for goods shipped by the Andalusia Packing Company to the branch house?

A. You mean if the money was sent from the branch house to the Andaluisia Packing Company?

Q. Yes.

A. Not that I know of.

Q. Yes, you say that all of the goods shipped by the Andalusia Packing Company were settled for by Swift & Company, Chicago.

686 A. I would not say that all of them, those that I know of, credit was taken by us; they were billed to Swift & Company, Chicago; billed to Swift & Company, Chicago, by the particular branch house to which they were shipped.

Q. Did you ever know of an instance in which Swift & Company, Chicago did not ultimately settle for goods shipped to a branch house of Swift & Company?

A. No sir.

Q. So all there was to that transaction was the shipment of goods to a branch house, and the receipt of the money from the Chicago house?

A. All except the order for the goods from the branch house.

Q. No commission was paid to anybody?

A. None so far as I know.

Q. What was the arrangement under which the brokers sold, was there a commission payable there?

A. Yes sir. You refer to what brokers?
Q. Any broker.
A. Clark or Allen?
Q. Any broker that the Andaluisia Packing Company ever did business with?
A. Yes sir.
687 Q. They did?
A. Yes sir.
Mr. Taylor: That is all.

Rerecross Examination by Mr. Horton.

Q. Mr. Conner, I show you exhibit marked for identification A-16, referring to the account of Swift & Company, Norfolk. I call your attention to the pencil notation up here "Commission paid by"—which extends down to the period of January 15th to February 27, after that, that notation is left off. Referring to this record, would you say the sales were made to Swift & Company, Norfolk, which were direct sales between the Andaluia Packing Company, and Swift & Company, and did not go through any broker?
A. Yes sir, I think I would.
Q. Do these amounts in here represent carload lots?
A. I would judge that they were car lots; I know we shipped swift & Company carloads; that is about what a car would be worth; I dont know just exactly; those are car numbers.
Q. And that is at least twelve carloads that did not go through a broker?
A. Yes sir.
688 Q. Those were all shipped prior to May 10th, 1917, were they not?
A. Yes sir.
Q. And referring to the credits there on the page, there is credits which show that those shipments were all paid for, does it not?
A. Yes sir.
Q. And the account is balanced, is it not?
A. Yes sir; I have not checked it; but it seems to be.
Q. Now, on these sales that you made to Swift & Company branch houses, let's see, particularly Birmingham and Montgomery, how were the prices fixed?
Mr. Taylor: Now, what sales do you refer to; those made after July 24, 1917, or those before July 24, 1917, if there were any before?

Mr. Horton: Both before and after.

Q. (By Mr. Horton): I will ask you if they make—

A. All the sales that I recall were made by phone, and the price was agreed on at the time the order was phoned.

Q. It was a question of your trying to get as good a price as you, good a price as you could get, and they were trying to buy it as cheap as they could?

689 A. They would ask us what we had on hand, and what we wanted for it.

Q. You would base your price on the amount of stock that you had on hand and the market price?

A. Yes sir.

Reredirect Examination by Mr. Taylor.

Q. Now, when were the sales that you had reference to, before July 24th, 1917, or after July 24th, 1917?

A. The ones that I had in mind at the time were made while Mr. Rogers was away, while I was temporarily discharging the duties that he would ordinarily assume, while he was away.

Q. And they were after July 24th, 1917?

A. Yes sir, they were after July 24th, 1917.

Q. Those were the sales which you billed to Chicago?

A. Yes sir.

Q. Sent the bills to Chicago?

A. Yes sir.

Q. Now, referring to this account of Swift & Company, Norfolk, Virginia, about which Mr. Horton has just asked you, I will ask you if that account was kept by you?

A. No sir, I made that statement when you first asked

690 me about it.

Q. Was there anything in that account in your handwriting?

A. No sir.

Q. And how about these pencil notations; did you make those notations?

A. No sir, I did not.

Q. Do you know what this means?

A. Well, I think I do.

Q. Well, do you know what they mean?

A. I would say yes.

Q. Was it customary to put this sort of pencil notations on accounts?

A. I do not know, sir, I did not keep the books.
Q. Do you know who made those pencil notations?
A. No sir; I think I recognize the figures, but then I dont —I would not swear to them.
Q. Whose do you think they are?
A. I think they are Mr. Davis'.
Q. Did you have a broker at Norfolk, Virginia, during the time any of these sales were made?
A. We made sales through Oliver Wynn.
Q. And when did Oliver Wynn act as your broker at Norfolk?
691 A. I dont know when he began to act for us; he acted for us until the time that the sale of this stock was made.
Q. And were these orders secured through Oliver Wynn?
A. Some of them were.
Q. That were shipped to Swift & Company, Norfolk?
A. Some of them were; some were not.
Q. Can you state from this account here which were and which were not?
A. No sir, not except in a general way; that we paid the commission on the orders that he secured.
Q. These orders that you speak of receiving by telephone were from they Birmingham house, were they not?
A. The Montgomery house.
Q. The Montgomery house?
A. And Birmingham house.
Q. You received some from the Birmingham house also?
A. Yes sir, to the best of my recollection.
Q. Swift & Company branch house at Birmingham, Alabama?
A. And Montgomery, yes sir.
Q. And that was subsequent to July 24th?
A. Yes sir.
Q. And they were billed directly to Chicago, as you
692 have testified?
A. Yes sir.
Q. Now, was that before you left—how long was that before you left—I call your attention here to the account of Swift & Company, Birmingham, Alabama, and I will ask you if that will refresh your recollection?
A. July 14, July 31st, August 30th.
Q. Did you bill directly to Swift & Company of Chicago for the order shipped on July 14th?
A. I could not say, Mr. Taylor, which were billed, and which were not. The account that I refer to was while Mr.

Rogers was away, in Chicago; I was acting in his place at that time; he was in Andalusia a while, and then he left again.

Q. Would you say that was the August account?

A. I would think it was.

Q. Do you know whether these red figures $998.73, in the column headed "items" has any significance?

A. No sir, I dont know, that it has any particular significance at all.

Mr. Taylor: That is all.

693 *Rerecross Examination by Mr. Horton.*

Q. I notice on the account which counsel just showed you, with Swift & Company, Birmingham, that there is no entries appearing upon here after August 30th, 1917; I will ask you if there was not a change in your bookkeeping method about that time?

A. The books were changed, but I dont know what date.

Q. And any other sales would appear upon another account?

A. Well, I feel quite sure it would.

Q. Or be kept in a different way?

A. But I dont know as a matter of fact.

Q. Wasnt it sometimes the custom to bill these goods to Swift & Company C. O. D. that is, with draft attached to the bill of lading?

A. I think some of the Norfolk shipments were made that way, I dont recall any others.

Mr. Horton: That is all.

Reredirect Examination by Mr. Taylor.

Q. When was that?

A. According to the best of my recollection all of the 694 shipments to Norfolk were made that way.

Q. When were they made?

A. The account there would be all the way I would have of telling, as shown by the entries on the book; January 27th to July 16th; May 10th, rather—that July 16th is when it was paid.

Q. Then your answer is when? From January 15th to when?

A. Well, I think all shipments that we made them were made bill of lading attached, draft to the bill of lading.

Q. What was the last date? You said from January 16th to July 16th?

A. Well, I looked at the wrong side. May 10th, I think, was the last shipment.

Mr. Taylor: That is all.

Examiner Sadler: Any other examination of the witness?

Mr. Taylor: No.

Mr. Horton: No.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Examiner Salder: We will adjourn now, gentlemen.

Mr. Taylor: Let us see if we cant finish up tonight.

Examiner Sadler: All right, proceed then.

695 WALTER A. DAVIS, called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haycraft.

Q. Give your full name to the stenographer.

A. Walter A. Davis.

Q. What is the residence?

A. Andalusia.

Q. What is your business?

A. Bookkeeper.

Q. Where are you so employed now?

A. Just at this time I am employed by some turpentine interests that Mr. Dading is president of. He is president of the Sessons Grocery Company. I have been with them for the past two or three years.

Q. Were you ever employed by the Andalusia Packing Company?

A. Yes sir.

Q. When?

A. The whole period of time; I went there right at the latter part of May or the first of June, 1916; I don't remember the date exactly; it was along, I think probably a few
696 days after the first of June.

Q. In what capacity?

A. Bookkeeper.

Q. How long did you stay with them?

A. I stayed with them until the business was transferred.

Q. Until when?

A. I was with them until about the 20th of November, 1917.

Q. Until about the 20th of November?

A. 1917.

Q. Your duties continued the same all the time?

A. Well, not exactly, no. After Mr. Colt came down to take charge of the office—I had had charge of the office—I was cashier and looked after the books generally; after he came down he took active management of the office, and I acted in the capacity of Cashier.

Q. Before he came you were in charge of the office, were you?

A. Yes sir.

Q. Speak a little louder. Can you recall about when he came to the plant?

A. Well, not the exact date; it was about in July, some time, I think, 1917.

Q. Did you have a superior officer before that time?

697 A. Yes sir.

Q. Who was he?

A. When I first went over there, Mr. Conner was manager, and he did practically all the letter writing; I did all the other work in the office. The business grew, and we added a stenographer, and Mr. Conner kept doing the same kind of work, such as writing letters, and so forth, only a little more detail was added. This stenographer, he had a young man there, he took on some of it. Then when the ledger work grew so heavy that we had to add at different times men to work on the ledger, to work on the ledgers, I stayed on the window figured the pigs that were brought up from the stock pens, and so forth, and all remittances were turned over to me; I looked after them.

Q. Did you superintend the ledger work?

A. Yes sir.

Q. That is, those two men that were working on your ledgers were working under your supervision?

A. Yes sir.

Q. Then this was changed somewhat after Mr. Colt came there?

A. Well, Mr. Colt had charge of them entirely.

Q. Then you worked under him?

698 A. Yes sir, worked under him; I did the same work though, that I had done before and except that the other men in the office were responsible to him and not to me.

Q. You still supervised their accounts, did you?
A. Yes sir, we conferred together.
Q. Were there any changes in the accounting system while you were in charge of the books, before Mr. Colt came?
A. Before Mr. Colt came?
Q. Yes?
A. Yes sir, in—I cannot give the exact date, I could refer to these books—I think it was on October 14th that the change was made.
Q. What year?
A. '16.
Q. 1916?
A. Yes sir.
Q. What change was made at that time?
A. We had an auditor, Mr. McGinty, from Atlanta, came down and went over the books and checked them up and changed our system some; gave us a system of distributing our sales so that we could tell what—how much of each product was sold; we did not do that before.
699 Q. I will ask you to look at some of these exhibits, marked for identification A-14, A-15, A-16, A-17, A-18, A-19, and A-20, and I will ask you if these records which I have indicated to you were a part of the bookkeeping system used by the Andalusia Packing Company while you were in charge of those books, of their books?
A. Yes sir.
Q. Now, were there any changes made when Mr. Colt came, in the bookkeeping system?
A. No sir, except that they added from time to time more detail work, to give them a closer check on the stuff that was in the house, the products; they kept up with their killing, and the amount of salable stuff that came out of the live stuff killed. They went into that a good deal more thoroughly than we did.
Q. Did they make any more reports, were more reports made periodically than you had been making before?
A. Yes sir.
Q. Was there any difference in the character of those reports, any of them?
A. We had never made any reports, periodical reports, except when we would take stock, or something like that;
700 submit a trial balance at the end of the month to Mr. Henderson; he in turn would take it before the board of directors, or anyone else that required information. But

after that time they installed these different reports; a report to the Chicago office the result of the totals of those things, that I have mentioned, the amount of stuff we had killed, and the amount we had turned out of different products, the size of hogs, and so forth?

Q. Who prepared those reports?

A. Well, they had different people in the office, the stenographers, and they added several clerks.

Q. Did you work on any of them yourself?

A. No, very little work I ever did on those; I had all I could do at the window.

Q. Did you know the nature in a general way of those reports?

A. I might illustrate that to you.

Q. Yes, I would be glad to have you do it.

A. They would buy say ten or fifteen or twenty cattle of a certain grade, that they would class—they would mark those cattle, put tags on them, metal tags, and run them through the plant, and keep an acount of those particular cattle,

701 and when they were dressed and in the refrigerators, they would weigh them, and by checking them against their original weight and cost, and so forth, knew this class or that—I did not do any of that work, but I knew that it was done.

Q. And those reports, based upon this close check that you speak of, were sent to Chicago, as I understand it?

A. Well, I suppose they were; they were used there in the office in determining the prices, and so forth, to be paid for cattle, to see whether or not,—I suppose—

Q. Was there any difference made—

Mr. Horton: Wait a minute, please; I move to strike out the answer of the witness to the effect that he supposed these reports were sent to Chicago; unless he knows he should not state.

Examiner Sadler: The motion to strike will be sustained.

Q. (By Mr. Haycraft) Do you have any knowledge in that regard?

A. No, I could not say positively that they were sent.

Q. Ever heard any instructions given to send them out?

A. No.

Q. Did you ever see envelopes addressed to Swift & Company, Chicago, Illinois, containing such reports?

702 A. Not those reports, no.

Q. Put in the mail?

A. No sir.

Q. Were you ever informed by Mr. Colt the purpose of the preparation of these reports referred to, these total statements?

A. No.

Q. When did you discontinue furnishing the reports that you had been furnishing to Mr. Henderson?

A. At the time that Mr. Colt and Mr. Rogers came down.

Q. You have—you had no further responsibility in that regard after that time?

A. No sir.

Q. Were there any changes made in the form of remittance or billing of goods as they were sold after Mr. Colt came?

A. Ask that question, please sir, remittance or billing?

Q. Both.

Examiner Sadler: Just read him the question.

A. Together?

Q. Answer them separately, if you wish?

A. Well, the remittance for the products sold before that time had all come into our office there; that is, they came
703 into the office and we rendered them there.

Q. Explain the system—I will ask you, when you had charge of the office, how goods were billed out to customers, sold direct or through brokers, and how remittances were made, so we can get an idea of how the business was done?

A. If we sold—if a broker sold a certain number of pounds of any particular product, we loaded it and delivered it out to him; that was charged direct to his account; it was not billed that way; we made out a different record, and it did not go through the books, that is, through the regular ledgers; these accounts that we billed straight were remitted for and came into the office to us, and we in turn deposited them in the bank. After they came down and took charge, the account was charged to Chicago; these accounts that were not sold to Swift, either in Chicago or some of the branch places, we handled sometimes. The consignment accounts were billed—they furnished us with a duplicate invoice for the stuff sold, and then when that was paid for they remitted us, that is, they deposited—Allen put our deposit in the Birmingham Trust & Savings Company, I believe was the bank, and they would send us deposit slips for them. After that, all this stuff that was sent to Chicago or to the branch houses
704 was charged out to the Chicago office, and they did not remit to us directly.

Q. You mean they—

A. Well, what I mean by that is Swift & Company at Chicago; that did not apply to the brokerage accounts, you understand, like Allen's or Clarke's; they continued to remit to us in Andalusia.

Q. That applies only to the sales made to Swift's branches?

A. That is the idea, Swift's branches.

Q. Well, supposing you made sales to other trade, not to Swift's branches, after the change in ownership, after Mr. Colt came there, how would remittances be taken care of then?

A. To people other than Swift's branches?

Q. Yes sir, suppose you made a sale to John Jones, merchant in Andalusia, for instance, or merchant in Montgomery, either?

A. I understand. That was put on the ledgers, just run through, and the remittance came into the Andalusia office.

Q. And you would take care of it?

A. Yes sir.

Q. Then I understand you to say, the sales made to concerns or parties other than Swift & Company branches, were continued in the same way?

705 A. Exactly the same way.

Q. And so long as the brokers lasted, their transactions were made in the same way?

A. The same way, yes sir.

Q. Then the only change was in regard to the sales made to Swift & Company branches?

A. Yes sir.

Q. You left the Andalusia Packing Company in November, did I understand?

A. Yes sir.

Q. Were they selling through any brokers at that time?

A. Yes sir.

Q. They were?

A. I think they were selling—yes, I am sure—let me see now, I don't remember, either, I could not say positively that they were selling brokers at that time. Now, that in a way, passed, as I told you before, before the office force was increased you see—I more or less had supervision over that, and I was more familiar with it. My work after they came there—of course, if I had been asked immediately after that,

I could have told you about it, but I could not say positively now that they were.

706 Q. You were not quite so familiar with that end of it?
A. With that end of it, I don't know.

Examiner Sadler: Adjourn until 9:30 in the morning.

(Whereupon, at 6:00 o'clock P. M. March 11th, 1921, an adjournment was taken until 9:30 A. M. of the following day, March 12, 1921.)

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707 WALTER A. DAVIS, called as a witness for the Commission at Birmingham, Alabama, on March 11, 1921, after having been first duly sworn testified in substance as follows:

(Copy testimony verbatim; Pages 1094-1105 when the hearing was adjourned at 6 P. M.)

MR. DAVIS was recalled to the stand on March 12, 1921 and testified in substance as follows: (pp. 1105-1149)

That he identified Commission's Exhibits A-15 and A-18 for identification as ledgers of the Andalusia Packing Company covering the accounts of J. W. Clark & Co. in Atlanta, Ga., and elsewhere. From an examination of this record book named the towns where customers of the Andalusia Packing Company were located and whose accounts appear in the ledger before July 24, 1917, and they are 19 towns containing such accounts in Georgia; 41 towns in Florida, and 115 towns in Alabama; that he also identified Commission's Exhibit A-17 for identification as the general ledger containing customers accounts with the Andalusia Packing Company located in Birmingham, Alabama during 1916 and 1917.

709 BEFORE THE FEDERAL TRADE COMMISSION

Federal Trade Commission,
Petitioner,
vs.
Swift & Company,
Defendant
} Docket No. 453.

Jacksonville, Fla., March 21, 1921.

9:00 o'clock A. M.

Before:
C. T. Sadler, Examiner.

Met pursuant to notice.

Appearances:

A. N. Taylor and D. F. Haycraft, c/o Federal Trade Commission, Washington, D. C., Appearing for the Federal Trade Commission.

A. H., and Henry Veeder, James M. Sheean and Frank L. Horton, Chicago, Ill., Appearing for Swift & Company.

710 MIKLE SCHEMER, called as a wifness for the Commission at Jacksonville, Florida, on March 21, 1921, after having been first duly sworn testified in substance as follows:

(Pages 1238-1250)

That his business is retail meat market in Jacksonville, Florida; that he handles western and Florida pork, beef and everything in the meat line and has been engaged in such business for the past thirteen years; that he bought fresh pork, hams, shoulder loins, and smoked hams, bacon and also lard packed by the Moultrie Packing Company; that Sam Smith represented the Moultrie Packing Company and that he began buying those products from Smith the first day Smith sold them and continued as long as Smith was handling Moultrie products; that this period of time was some time in 1916-17; that during the same period of time he was solicited by and bought from Swift & Co.; that he purchased western pork, shoulder and pork loins from Swift & Co.; that Swift &

Co. called upon him and tried to sell him smoked hams and bacon as well as fresh pork products before he began to buy and during the time he bought from Sam Smith; that Sam Smith stopped selling the Moultrie products and told him that Swift & Co. had bought the Moultrie Packing Company; that when Sam Smith stopped selling the Moultrie pork he bought western pork from other packers in Jacksonville including Swift & Co., and later Sam Smith began to represent the Tifton Co.; that he again bought southern pork from Sam Smith; that during the time he was selling Moultrie products he bought most of his meat from him.

711 Upon being recalled witness testified on March 23, 1922 (pages 1579-1584) in substance as follows:

That the last time Sam Smith called on him selling Moultrie Packing Company products he showed him a price-list that had prices higher than he had been paying for such products, that he remembered particularly the item of pork tongue that he had been paying 12c per lb., but listed on price-list 25c per lb.; that he tried to get pork tongues from Swift & Co. but could not get them.

712 A. H. MILLER, called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name?
A. A. H. Miller.
Q. In what business are you now?
A. Fresh meat.
Q. Retail and wholesale?
A. Retail and wholesale.
Q. Where is your place of business?
A. 316 West Forsyth Street.
Q. How long have you been engaged in that line of business at that place?
A. 12 years.
Q. In what name is the business done?
A. Jefferson Market, Incorporated.
Q. What is your connection with the firm of the Jefferson Market?
A. Vice President.
Q. Is it a corporation?

A. Yes sir.
713 Q. Who buys the meat there?
A. I do.
Q. Were you the buyer in 1916 and 1917?
A. Yes sir.
Q. Now along about that time did the salesmen for Swift & Company call upon you from time to time?
A. Yes sir, they generally called once a day.
Q. Were they at that time selling pork products?
A. Yes sir, they sold pork—all packing house products.
Q. Among the products can you state what they were offering for sale at that time?
A. They were offering a full line of packing house products. Pork shoulder and loins.
Q. Hams?
A. At that time I don't remember whether they handled ham or not, they handled shoulder.
Q. How about smoked meat products?
A. Oh, they handled everything in the smoked meat line.
Q. How about what is referred to as pork trimmings?
A. Pork trimmings, well that is something I very seldom buy and consequently I didn't get the prices.
Q. Do you know whether or not at that time Swift & Company were offering pork trimmings for sale?
714 A. No, I do not.
Q. How about lard?
A. Lard—why that is handled on the other side and as I have nothing to do with it I wouldn't know about the lard.
Q. Now that condition continued how long? That is, Swift & Company's representative here offering these products to you in your market?
A. Why Swift & Comany has handled pork products for quite a while, I couldn't just say how long—seven or eight years.
Q. Down to the present time?
A. Yes sir.
Q. You were required by subpoena served upon you to produce the bills and statements of and records showing the amount and kinds of the meat products purchased from the Moultrie Packing House during the year 1916 and 1917. Did you produce anything as required by this subpoena?
A. I have the records of my purchases.
Q. Will you state where this record came from?
A. I got it out of the file in the office.

Q. Has it been in that file since it was made?
A. It has been in that file ever since it was put up.
Q. Who made that record?
715 A. E. H. Morris.
Q. Who is E. H. Morris?
A. Secretary and treasurer of the company.
Q. Is that a correct statement?
A. Absolutely correct—yes.
Mr. Taylor: I offer in evidence the record which is submitted by Mr. Miller.
Mr. Horton: We object on the ground it is not made by the witness, not properly identified, and it is not competent to the issues in this case.
The Examiner: The objection will be noted and the paper will be received in evidence and marked Commission's Exhibit No. 116.
Q. Now Mr. Miller, does every item appearing on this sheet, No. 116 represent meat products bought from the Moultrie Packing Company?
A. Yes sir.
Mr. Horton: I object to that, Mr. Miller is not the bookkeeper.
The Examiner: The objection will be noted.
Q. Now what are these debit items on this sheet?
A. It shows practically the pork cuts.
716 Q. Mr. Miller I call your attention to the fact that the first entry on this sheet, Exhibit No. 116 is an entry of date of December 15, 1916, and on the credit side appears the word 'For'd', will you state what that indicates?
A. I don't know unless it included another sheet of that.
Q. There must be another sheet prior to 1916?
A. Yes sir.
Q. Is that the way you want your answer to appear?
A. Yes sir.
Q. Will you endeavor to locate the earlier sheet and if you can find it bring it here?
A. Yes sir.
Q. Mr. Miller, about how much pork products were you selling during this period—December 15th 1916 to September 27th, 1917?
Mr. Horton: We object on the ground it is irrelevant and immaterial.
The Examiner: The objection will be noted.
A. Well, it depends upon the seasons. In winter we han-

dled more than we did in Summer. It would run anywhere from 1000 to 4000 or 5000 pounds.

Q. For how long a period?

A. Sometimes we have as much as 5000 and then

717 again as small as 500.

Q. Over how long a period?

A. That would be a week.

Q. Now do you mean by that in summer time you would buy as little as 500 pounds a week and in winter you would buy as much as 5000 pounds a week?

A. Well, at times we would use more Western meat and at times more Southern pork.

Q. What I want to know was that intended to cover your total volume of pork?

A. No, just Southern pork.

Q. I referred to the total volume of pork handled by you?

A. Well, I used about in the neighborhood of 4000 of all kinds in a week.

Q. Is that an average throughout the year, do you mean?

A. Yes, sir.

Q. And how will that run in summer—the lowest?

A. In summer time it would run about 2500 pounds.

Q. And in winter?

A. 5000.

Q. You are now talking about the period of 1916 and 1917?

718 A. Yes, sir.

Q. In giving these figures?

A. Yes sir.

Q. Now would it be a fair conclusion to draw from your answer as to the total quantities of pork products of all kinds, you were selling, and the total quantities of Moultrie pork that you have testified you have sold, that in winter time your principal selling of pork was Moultrie pork, and in summer time you sold more western pork than you did of southern pork?

Mr. Horton: I object to the question on the ground he asks the witness for an estimation and furthermore it is putting words in the witness' mouth to which he has not testified, and that it is a leading question, also that it is incompetent irrelevant and immaterial and not within the issues here.

The Examiner: The objection will be noted.

A. Well, we use a good deal more pork in winter time than we would in summer time.

Q. That is, in proportion to the total amount of pork, do you mean?

A. Yes, sir.

719 Q. You are still testifying as to the conditions in 1916 and 1917?

A. Yes sir.

Q. Now during this period of 1916 and 1917 from whom did you buy the Southern pork that you handled?

A. Sam Smith, a broker.

Q. And Sam Smith was selling Southern pork from what packing company?

A. The Moultrie Packing Company.

Q. Was all that Southern pork handled during this period from Sam Smith Southern pork?

A. Yes, sir.

Q. And the Western pork, where did you get that?

A. Various places, scattered around, divided it among all of them.

Q. Would it be possible for you to make an approximate estimate of the proportion of Moultrie pork you handled during that period and the proportion you obtained from all these other sources?

A. No sir.

Q. Would you be able to say whether the Moultrie pork you handled exceeded in quantity all the pork you handled from other places?

720 Mr. Horton: I object to that, the witness says it would be impossible for him to do so, it involves an estimate.

The Examiner: The objection will be noted.

A. Well, I couldn't very well say.

Q. Back in the winter time,—the fresh meat you handled in the winter—

A. In the winter time they use the biggest portion of the fresh meat.

Q. In the winter time they use the biggest portion of the fresh meat?

A. Yes, sir, during the winter months—about three to one.

Q. Would it have run higher than that?

A. Oh, yes, there have been weeks that I use nothing else.

Q. That was in the winter?

A. Yes, sir.

Q. How about the summer?

A. When they sent it refrigerated it came all right, when it arrived by express we had trouble with it a good deal of the time, but with refrigerator cars it came all right.

Q. What pork do you refer to now, in that?

A. The Moultrie Packing Company pork.

721 Q. Now, is it proper to understand from that answer, Mr. Miller, to state that the proportion of Moultrie pork used would depend upon the way in which you could get it?

A. That had a whole lot to do with it, yes, sir.

Q. Now, about what would be the proportion of the pork you handled in summer time which came from the Moultrie Company and all other sources? I refer to fresh pork.

Mr. Horton: I object to that on the ground that the witness is asked to state his opinion, and on the further ground it is not the best evidence, and on the ground that so long a period of time has elapsed that opinion evidence is incompetent here, and on the further ground it is immaterial and irrelevant.

The Examiner: The objection will be noted.

A. That would be a very hard matter to say because some weeks that would be a whole lot more than others and to give you anyyhere like an accurate amount,—I wouldn't be able to do it.

Q. Did you buy during the summer months the fresh pork?

A. No, about five months in the vear and in the seven months we buy a good deal more Western than Southern pork.

722 Q. Do your books show what you buy of Western pork during the same period?

A. I don't know if they do, Mr. Morris might have them.

Q. Will you ask Mr. Morris to look up and ascertain the bills of the Western pork bought as well as the fresh pork as shown by this Exhibit No. 116?

A. Yes, sir.

Q. Will you also ask Mr. Morris to please bring bills of the Moultrie account so it would be possible to compare them?

A. Yes, sir.

Q. How about beef from the Moultrie Packing Company, did you handle much of that?

A. I never bought many pieces of beef—never bought any beef from the Moultrie Packing Company.

Q. Do you recollect that a time arrived when Smith ceased to call upon you for the Moultrie Packing Product?

A. No, I don't know the date.

Q. Well, do youu recall that he did cease to come?

A. Yes, sir.

Q. I hand you Exhibit No. 116 and call your attention to the last entry on the credit side and I will ask you if that refreshes your memory in any way as to the time or about the last time you bought from him?

723 A. As far as I know that is the last that we bought anything from him.

Q. What is that date?

A. 17th of September 1917.

Q. Did you have any conversation with Smith at this time or any time previous as to his leasing to represent the Moultrie Packing Company?

A. Well, the only thing I remember is that he said Swift & Company had bought out the Moultrie Packing Company.

Mr. Horton: We object and move to strike the answer of the witness on the ground it is hearsay.

The Examiner: The motion to strike will be noted.

Q. As nearly as you recall with relation to the date of this last purchase when was it that Mr. Smith made this statement to you?

Mr. Horton: We object to the question on the ground that it is hearsay and would not be competent.

The Examiner: The objection will be noted.

A. Well, as near as I can remember he just came in and said that he had been notified that Swift had bought them out and he didn't have no more job,—I don't remember the exact date.

724 Q. Are those the exact words he used as near as you can remember?

A. Yes sir.

Mr. Horton: I object to the answer and move to strike it out.

The Examiner: The objection will be noted.

Mr. Taylor: Which answer is that?

Mr. Horton: All of that with regard to that conversation.

Mr. Taylor: On the ground simply that it is hearsay?

Mr. Horton: On the ground it is hearsay, on the ground

it is incompetent, and on the ground that it is irrelevant and immaterial.

Mr. Taylor: As to this objection, Mr. Examiner, I will say I think if we were seeking to prove that Swift & Company was buying Moultrie Packing Company out it would be a proper objection, but that is not the purpose.

Mr. Horton: What is the purpose?

Mr. Taylor: The purpose is to show why the broker, Sam Smith, ceased to sell any goods of the Moultrie Packing Company.

Mr. Horton: I further object on the ground that
725 Counsel has shown by his statement that it is clearly incompetent testimony.

Q. Now going back to the period of 1917 after having this report from San Smith, where did you get your meat products?

A. I bought from different packers in town, and I bought some from the Chipley Packing Company.

Q. Did you ever buy any more from Sam Smith, though?

A. I did after he had the Tifton account, and Macon.

Q. Did you buy very much?

A. I didn't—I can't remember just how much I did buy from Tifton.

Q. Do you know whether the proportion of the pork handled by you bought through San Smith from the Tifton plant is as great as the amount bought from the Moultrie plant during the time you did buy?

Mr. Horton: I object, that is wholly irrelevant and immaterial.

The Examiner: The objection will be noted.

A. No, at that time I was dividing the order between the Chipley Packing Company and Tifton.

Q. And the product of the Chipley Packing Company and Tifton together represent the bulk of your fresh pork sales?

A. Yes sir.

726 Q. Did that continue?

A. Well, Tifton didn't continue so long but Macon opened up.

Q. Do you know what happened with regard to Tifton?

Mr. Horton: That is objected to on the ground it is irrelevant and immaterial.

The Examiner: The objection will be noted.

A. Only by hearsay. I heard Armour & Company had bought out Tifton.

Mr. Horton: That is objected to on the ground it is hearsay, and I move to strike the testimony.

The Examiner: The motion to strike is sustained.

Mr. Taylor: We are simply trying to paint a picture of the market here, showing conditions as they existed at the time, and why these people could not buy Southern pork.

Mr. Horton: I object on the ground the picture is not properly painted. The artist is not a good artist.

Q. Now going back to the time when you heard some statement in regard to the Tifton plant, was that about the time that Smith stopped selling the product of the—

Mr. Horton: I object on the ground the witness has not shown that any statement was made in regard to Tifton.

727 The Examiner: The objection will be noted.

Mr. Horton: The answer was stricken out.

Mr. Taylor: All right, I will withdraw the question.

Q. Mr. Miller, did you hear some statement made as to what had been done to the Tifton plant?

Mr. Horton: I object to that, the Tifton plant has nothing to do with this case at all.

Mr. Taylor: The objection will be noted.

A. Why, the Tifton plant, I heard that Armour had bought it. They were not shipping down this way,—they were shipping to other points.

Mr. Horton: I move to strike the answer of the witness on the ground that it is hearsay.

Mr. Taylor: Mr. Examiner, before you rule upon that I would like to say that I feel that that answer should stay on the record as a part of the picture of the market at that time. It throws some light upon the issues in this case and for that reason serves a useful purpose.

Mr. Horton: It does not throw any light on the issues and complaint in this case.

Mr. Taylor: It shows the conditions of the market.

The Examiner: The motion to strike will be noted.

728 Q. Is Sam Smith still selling the product of the Tifton plant?

A. No, sir.

Q. When was it he stopped?

A. That I couldn't say, I don't recollect.

Q. With reference to the statement which was made to

you about Armour buying out the plant, when was it he stopped?

Mr. Horton: That is objected to on the ground it has nothing to do with the issues here.

The Examiner: The objection will be noted.

Q. Do you remember whether it was before, or after hearing that statement, that Sam Smith quit selling?

A. It was after..

Q. Can you state approximately how long after?

A. No, sir.

Q. Was it as much as six months after?

A. No, sir, I couldn't say.

Mr. Horton: May it be understood that we object to this entire line of testimony upon each and every ground previously urged?

The Examiner: Yes.

729 Q. Was it as much as three months after?

A. I couldn't say, anything about the time.

Q. Then it was sometime between the time you heard the statement and six months after to the best of your recollection?

A. That is my knowledge.

Q. And that is as near as you can locate the time when Sam Smith stopped selling the product of the Tifton plant?

A. Yes, sir.

Q. Are you buying Chipley product now?

A. No, sir, the Chipley plant is not running now.

Mr. Horton: The objection to this line of testimony still stands?

The Examiner: Yes.

A. I heard they were in Bankruptcy but I don't know whether that is official or not.

Q. Are you getting any Macon pork now?

A. No sir.

Q. Do you know what happened there?

A. The plant is closed down.

730 Q. Do you know why?

A. No, sir.

Q. Are you getting any Southern pork now?

A. Yes, sir.

Q. From whom do you get it?

A. Armour & Company and a little from Swift & Company.

Q. Do you buy much of it now?

A. Quite a little, yes.

Q. Do you know where the Swift & Company pork comes from?

A. Well, I don't know where it comes from, but if I looked at the abattoir number I could tell. I have had some Moultrie pork here recently, I don't know where it was bought.

Q. But some of it was Moultrie pork, that you noticed?

A. Yes, sir.

Q. How long has that condition existed?

A. What condition?

Q. That you received Moultrie pork?

A. Well, I hadn't bought Moultrie pork from Swift & Company until recently, but they have had it here.

731 Q. Did they offer to sell it to you?

A. Yes, sir.

Q. Now going back to the time when Sam Smith stopped selling that Moultrie pork, do you recall whether Swift & Company offered you Moultrie pork at that time?

A. No, sir, I don't.

Q. Can you recall the earliest time when Moultrie pork was offered you by Swift & Company?

A. No, sir.

Q. Do I understand you correctly, that after Sam Smith ceased selling Moultrie pork you were able to get local pork elsewhere?

A. Yes, sir.

Q. By that do you mean soft pork?

A. Yes, sir.

Q. And is it correct to understand your answer that you continued to buy soft pork from local plants as long as you were able to get it from them?

A. Yes, sir.

Mr. Horton: By local plants what do you mean?

A. Independent plants—Chipley, Macon, Tifton.

Q. They were known as independent plants?

732 A. Yes, sir.

Q. And after these plants ceased to be independent plants where did you get your soft pork from?

A. Soft pork,—got it from Armour—right here in Jacksonville.

Q. After that where did you get it, after the local and independent plants ceased to operate?

A. This is the first year there has not been a local plant.

Q. Have you been buying from Swift & Company all this year?

A. Have been buying stuff from Swift & Company right along but very little pork.

Q. I refer to soft pork?

A. Very little soft pork.

Q. Now how long have you been buying soft pork from Swift & Company?

A. Well, I haven't bought but very little of any description.

Q. You are buying some soft pork from some concerns I believe you say?

A. I bought a little last week, but very little. I bought some pork hams.

733 *Cross-Examination by Mr. Horton.*

Q. Mr. Miller, you said when you stopped buying from Mr. Smith that you bought from various places—that you bought from "all of them." Please explain your answer, what you mean by "them"?

A. Armour & Company, Chipley, Macon, and Tifton—soft pork.

Q. Were they all represented here in town?

A. All represented.

Q. Did you buy from Morris & Company, also?

A. No sir, they didn't have any soft pork.

Q. Did you buy any Western pork there?

A. On rare occasions I bought Western pork.

Q. They had a representative here in this City?

A. Yes, sir.

Q. Cudahy & Company had a representative here?

A. Yes sir. I bought from Cudahy.

Q. They were handling a full packing house line?

A. Yes sir.

Q. And Wilson & Company and their predecessors in business, Sulzberger?

A. We never bought from Sulzberger but we have

734 bought from Wilson.

Q. They are represented here—have a full packing house line?

A. Yes, sir.

Q. Kingan's Company?
A. Yes, sir.
Q. Full packing house lines?
A. Yes, sir.
Q. Smith & Richadson?
A. We don't buy from them, they are competitors.
Q. But they are represented here, carrying a full line of meat products, fresh and salt?
A. Yes, sir.
Q. The Jacksonville Cattle Company?
A. We don't buy anything from them.
Q. Wilson Slaughter Company?
A. Yes, sir.
Q. They have been here sometime?
A. Yes, sir.
Q. Prior to 1916?
A. Yes, sir.
Q. And they have been slaughtering cattle and hogs?
735 A. They handle beef in the quarter, but they don't cut up any hogs.
Q. Armour & Company have a slaughter place here?
A. Yes, sir.
Q. Numerous brokers have accounts for the various packers, handle packing house lines?
A. Yes. sir.
Q. Do you buy anything from them?
A. Only smoked meats.
Mr. Taylor: Now we wish to object to the last question and move to strike the answer; there is no foundation layed for the testimony.
Mr. Horton: If the Court please, I am asking the witness to explain his answer. He said he bought from the various places, and he said "I buy from all of them." I am asking who he meant by that.
The Examiner: The objection will be noted.
Q. Now Brown-Marchessean representing Jacob Dold Packing Company, did you buy from them?
A. No, sir, I never have bought from them at all.
Q. They are represented here?
A. Yes, sir.
Q. P. A. Degnan?
736 A. Yes, sir.
Q. He represents Jacob P. Shaffer of Baltimore, does he not?

A. Yes, sir.
Q. Did you buy from him?
A. Yes, sir.
Q. He has been in business here for sometime?
A. Yes, sir.
Q. Since 1916 or 1917?
A. I don't know whether he has been selling that stuff right along or not—for the last two or three years he has.
Q. Loyd & Gray, representing the Indiana Grocery Company?
A. No, sir.
Q. George A. Hormel, Boston, Minnesota, did you buy from him?
A. No, sir.
Q. He does business here?
A. Yes, sir.
Q. Harman Bros., of Jacksonville, Florida, representing Klink of Buffalo, New York and Jacob Dold Packing Company; the Hammond Standish Company of Chicago, Illinois, and Detroit Michigan; George A. Horner & Company of Boston, Minnesota,—have you bought any from them?
737 A. No, sir.
Q. Are they represented here?
A. Yes, sir.
Q. And have been for a number of years?
A. Yes, sir.
Q. Have you bought anything from them?
A. No, sir.
Q. The Hulsey Bessent Company representing the Allied Backers and various other independent packers, have you bought anything from them?
A. No, sir.
Q. They are represented here are they, they are doing business here?
A. A Packing house here by the name of Lattimer,—I bought some stuff from him. He was from the Macon plant —they have closed out.
Q. O. C. Holland?
Mr. Taylor: Mr. Examiner, I object to the scope of these questions as being outside the scope of the direct examination.
Mr. Horton: Do I understand the scope of your direct examination is strictly limited to pork products?

Mr. Taylor: Yes sir. I asked one witness this
738 morning, whether it was Mr. Miller or the witness previous to him, I don't remember, if he bought any beef from Moultrie & Company.

Mr. Horton: It is understood we may strike out everything else but pork products?

Mr. Taylor: In the direct examination?

Mr. Horton: Yes.

Mr. Taylor: No, I consent to strike out nothing.

The Examiner: The objection will be noted.

Q. O. C. Holland & Company—

Mr. Taylor: Do I understand I may have the same objection to all these questions?

The Examiner: Yes.

Q. —Montgomery, Alabama, do they not quote and sell the Jacksonville trade here?

A. They were have sold me.

Q. Matley Bros., have you bought anything from them?

A. No, sir.

Q. T. C. Saussy & Company, representing Rath Packing Company, Waterloo, Iowa; the Wilson Provision Company of Peoria, Illinois; John P. Squires & Company of Boston, Massachusetts, have you bought anything from them?

739 Q. Do you know such a concern is in business here in this City?

A. Yes, sir.

Q. And has been for the last four or five years?

A. Yes, sir.

Q. They sell packing house products?

A. I think they do,—they never quoted me.

Q. Savage & Radavata,—of Jacksonville, representing and sell for the International Provision Company of Brooklyn New York and other places, have you ever bought from them?

A. No, sir.

Q. Have they quoted you?

A. No, sir.

Q. Do you know whether or not they are in business here?

A. No, sir.

Q. Since the independent packing companies have ceased to operate have they ever solicited your business?

A. Yes, sir.

Q. Have you bought anything from them?

A. Yes, sir.

Q. Pork products?

A. No, sir.

Q. Have they been in business here for some years?

740 A. No, they just got on this market here recently and I have bought some smoked meat and sausage from them.

Q. That is smoked pork?

A. Yes sir.

Q. C. E. Smith & Company representing the Independent Packing Company, Chicago, Illinois, have you ever bought from them?

A. No, sir.

Q. They sell here in this market, do they not?

A. Well, I have never met up with them.

Q. J. W. Snyder & Company representing the Cleveland Packing Company, have you bought from them?

A. No, sir.

Q. Wilson & Parker representing the North Packing & Provision Company, Boston Massachusetts, have you ever bought anything from them?

A. No sir.

Q. O. H. Wright & Company of Atlanta Georgia, have you ever bought anything from them?

A. No sir.

Q. C. W. Zarring, Independent Company in Jacksonville, Florida, representing Comstock & Company, have you ever bought anything from them?

A. No sir.

741 Q. Now, I believe you stated you were buying most of your Southern pork from Armour & Company?

A. Yes, sir.

Q. Did you get it from the local plant?

A. Delivered by them direct from the local plant.

Q. Why did you buy from Armour & Company?

A. Armour & Company has got it about a dollar and a half cheaper price than Swift has.

Q. Had Swift & Company sold you cheaper you had just as soon give them your business?

A. Just as soon.

Q. Do you know why they differed in price ?

A. I don't know why, they say it is in transportation. Armour & Company hauls by truck from the plant and Swift & Company has got to hire refrigerator cars.

Mr. Taylor: I move to strike out that answer.

The Examiner: The motion to strike will be noted.

Q. I believe you have stated you bought from what you have termed to be the Independent packing plants? I think you meant by that answer such plants as Moultrie, Chipley and Macon, and did I understand you bought from any
742 person—from Armour, Swift, and Morris?

Mr. Taylor: I object to the question, it shows clearly what.

The Examiner: The objection will be noted.

A. Not particularly because they had a better price—

Q. That is they sold soft pork cheaper?

A. Yes, sir.

Q. I believe that two or three years ago Swift & Company begun to solicit the hotel and restaurant trade in Jacksonville, is that right?

A. Yes, sir.

Q. I believe you objected to that?

A. Yes, sir.

Mr. Taylor: Now, Mr. Examiner, I move to strike out both of those last answers, there is nothing in the direct examination that would call for this or make this proper cross examination, it is wholly incompetent, irrelevant and immaterial and improper on every ground.

The Examiner: The objection and the motion to strike will be noted.

Q. And isn't it true that you have given preference to other packers where a question of price made it feasible to do so?

743 A. Yes, sir.

Mr. Taylor: May it be understood that I have an objection to all these questions along this line of cross examination?

The Examiner: Yes.

Mr. Horton: That is all.

Redirect Examination by Mr. Taylor.

Q. Mr. Miller, what class of trade does the Smith, Richardson Company run?

A. Hotels and restaurant.

Q. They specialized in hotel and restaurant trade, did they not?

A. Yes, sir.

Q. Do you know whether or not Armour & Company held the principal stock in Smith, Richardson?

A. That is what I have heard, I don't know.

Q. I believe you testified in answer to one of Mr. Horton's questions on cross examination that you preferred to buy salt pork from the local packers rather than the big packers,—did the local packers have a better price?

A. They always had a better price, yes, sir.

744 Q. Now, did that condition continue,—up until what time did it continue?

A. Well, I couldn't give you any date on that.

Q. As long as the local packers were operating independently of the large packers?

A. Yes, sir.

Q. Mr. Miller, from what source are you able at the present time to buy soft pork?

A. Armour & Company and Swift & Company.

Q. Who else?

A. That is all.

Q. And since that condition has prevailed is it that the prices have advanced on soft pork?

Mr. Horton: I object to that.

Mr. Taylor: I mean compared with the price on Western pork.

Mr. Horton: I object to that on the ground that it is improper redirect examination; on the ground no particular time is specified; on the ground that it is opinion evidence and on the ground that it is not competent.

The Examiner: The objection will be noted.

A. Well, there has not been a local packing company

745 operating for over a year and I would not have any comparison.

Q. I mean the comparison of the Western pork and the soft pork?

A. Just about a cent a pound difference.

Q. During the time Sam Smith was representing Moultrie Packing Company how much difference was there between Moultrie Packing Company product and the Western pork?

Mr. Horton: I object to that upon the grounds: first, at that time the conditions were entirely different. While the war was on there was a demand for all these products and the Northern packers were so crowded with orders they were not able to fill and it is a wholly different condition at this time.

The Examiner: The objection will be noted.

Q. How much difference was there?

A. Some weeks a great difference, it has been as high as five cents.

Q. About how did it run?

Mr. Horton: We object to this upon the same grounds previously urged.

The Examiner: The objection will be noted.

746 Mr. Horton: May my objections continue to all the questions under this line of testimony?

The Examiner: Yes.

Q. Take for instance pork loins, what would be the difference?

A. In price?

Q. Yes?

A. Anywhere from three to five cents.

Q. Fresh hams?

A. Well at that time the packers were not handling any fresh hams in this market at all.

Q. Fresh shoulders?

A. Fresh shoulders,—handled a few—they didn't cut them up, it would be just pigs—didn't get the cuts.

Q. When was it this happened that the packers began selling hams and fresh shoulders on this market?

A. Well, they began shortly after Armour opened this plant out here.

Q. Can you fix that date?

A. No, sir.

Q. Approximately—can you tell the year?

A. No, I don't remember the year right now.

747 Q. Was it before or after the Moultrie Packing Company began to operate?

A. It was around about the time—the same time. I think the Moultrie Packing Company was the first of the independent packers, if I am not mistaken.

Q. So that it was about that time when the Moultrie Packing Company was marketing its products, independent products, at the time the big packers began to bring in the hams and shoulders?

A. They never did bring in any Western hams and shoulders.

Q. Now what was the differential on pigs.

A. Pigs,—that is something I never bought—never did handle.

Q. How about lard?

Mr. Horton: The Examiner understands that our objection continues to all these questions?

The Examiner: Yes.

A. Lard—I didn't buy lard.

Q. How about smoked meat products, hams and shoulders?

A. I used all Western smoked products.

748 Q. Did you do that at that time, 1916 and 1917?

A. Yes, sir, I used it in mixed lots,—it was not satisfactory.

Q. Now after Mr. Smith ceased to sell any local pork product here what was the differential on pork loin between the Western pork and the soft pork?

A. Well, I don't know,—there was hardly a time we didn't have local soft pork because Tifton and Macon and Chipley were selling.

Q. After they ceased to do business, after Armour acquired Chipley and Tifton and Macon ceased?

A. Well, this is the first season Tifton and Macon have not operated.

Q. Well?

A. The local market has changed frequently, I would not have any comparison.

Mr. Horton: I object to this as improper redirect examination.

The Examiner: The objection will be noted.

Mr. Horton: Now it is understood that I am going to have the opportunity to cross examine this witness on this testimony?

749 The Examiner: Yes.

Q. You are buying soft pork loins and Western pork loins today, I believe you testified?

A. Yes sir.

Q. How much difference is there in the price?

Mr. Horton: I object on the grounds it makes a vast amount of difference as to the size of the loins and what particular cut of meat you are talking about.

Q. Take the quarter of loin similar, soft loins and Western pork loins of similar size.

Mr. Horton: We object on the grounds previously stated.

The Examiner: The objection will be noted.

Mr. Horton: The objection is not specific enough, there are different cuts.

The Examiner: The objection will be noted.

A. Well, the difference between the Western pork and

the soft pork,—that is usually about three cents a pound difference in it.

Q. And in 1917 it was what,—three to five you say?

A. About three to five.

Q. I believe you have testified that Swift is higher
750 than Armour?

A. Yes, sir.

Q. How much?

A. Around a dollar a hundred.

Q. Around a dollar a hundred?

A. Yes, sir.

Q. So that makes Swift's differential about two cents a pound?

Mr. Horton: No, it makes it one cent more if it was higher.

Mr. Taylor: If it takes it off of the soft pork it brings it closer together.

Q. Now, Mr. Miller, Mr. Horton has asked you on cross examination about a number of different concerns which have at some time or another been selling packing house products in this market; I will ask you to direct your attention to the soft pork product of the character known as Moultrie Packing House, and I will ask you if Morris & Company in 1917 sold any of that class of pork?

A. I bought from Chipley, I think.

Q. Now will you fix the time when Chipley Packing House came into existence?

A. I don't remember it.

751 Q. If I should tell you it was not until 1918 when Chipley came into the market would that tend to modify your answer in any way, assuming that it was correct?

A. Chipley came in before Moultrie went out, as I remember.

Q. So, at that time Moultrie was selling soft pork as an independent company was Morris & Company selling soft pork?

A. I don't know,—they bought a good deal of pork from Smith and also—

Mr. Horton: I am going to object on the grounds previously urged and move to strike the answer.

The Examiner: The objection and the motion to strike will be noted.

Q. The Smith you speak of was Sam Smith, broker for the Moultrie Packing Company and handling their goods?

A. Yes, sir.
Q. If he was selling soft pork it would be Moultrie pork?
A. Yes, sir.
Q. Aside from that do you know of any soft pork that was being sold by Morris & Company in 1916, 1917?
A. I do not.
752 Q. Cudahy & Company, were they selling soft pork?
A. All the packers, more or less, bought some soft pork.
Q. From where?
A. Chipley and Macon.
Q. But Chipley and Macon are not in existence at that time?
A. At the time Moultrie went out Smith sold them too, I think,—more or less, I know he sold Cudahy and Morris.
Q. Do you know if Cudahy was selling any soft pork other than what they bought through Sam Smith?
A. No, sir.
Q. Was Wilson & Company selling any—are they selling any now?
A. No. sir.
Q. Wilson & Company selling any soft pork at that time. 1916 to September 1917 other than what you were buying through Sam Smith?
Mr. Horton: I object to this entire line of testimony upon the ground that it is not competent to prove by this witness facts beyond his knowledge. I understand that this
753 witness doesn't pretend to know all the transactions of the several companies that he had mentioned.
Mr. Taylor: Mr. Examiner, this is very refreshing, to see Counsel for Respondent objecting to bringing out some of the evidence which he brought out on cross examination—the very answer which he brought out on cross examination. I submit that if his questons were proper on cross mine are equally so.
The Examiner: The objection will be noted.
A. I don't know.
Q. Did you testify that Wilson & Company were soliciting you to sell you goods during that time?
A. Yes sir.
Q. Did they endeavor to sell you any soft pork other than Moultrie pork?
A. They never offered me any soft pork.

Q. Did you know of any soft pork they were actually handling?

A. No sir.

Q. Are they handling soft pork now?

A. Not that I know of.

Q. How about Kiggan & Company—during that time
754 were they selling soft pork?

A. Not that I know of.

Q. Did they offer to sell you any soft pork?

A. No, sir.

Q. Did they offer to sell you other kinds of meat, other kinds of pork at that time?

A. Yes, sir.

Q. Is Kingan & Company selling soft pork at the present time?

A. No, not that I know of.

Q. Did they ever sell it so far as you know?

A. I don't know.

Q. Did they ever offer you any?

A. No sir.

Q. How about the Jacksonville Cattle Company, did they offer you any soft pork during the time Sam Smith was selling soft pork?

A. No, sir, they didn't cut up pork at all.

Q. Now how about these numerous packers Mr. Horton asked you about on cross examination, did any of them offer to sell you soft pork?

A. No, sir.

755 Q. Do you know of anybody else that any of them ever offered to sell soft pork to?

A. No, sir.

Q. How about Brown & Meacham representing Jacob Dold Company, did they ever offer to sell you any soft pork?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Do you know of anybody that they ever did offer to sell soft pork to?

A. No, sir.

Q. P. A. Degnan, did he offer to sell you any soft pork?

A. He didn't handle anything but smoked meats.

Q. Did he ever offer to sell you any soft pork?

A. No, sir.

Q. Do you know anybody he did try to sell the soft pork to?

A. No, sir.

Q. Loyd & Gray did they ever offer to sell you soft pork?

A. No, sir.

756 Q. Do you know of anybody that he ever did offer to sell soft pork to?

A. No, sir.

Q. George A. Hormel,—do you know Gray represents Hormel as brokers?

A. I don't know, sir.

Q. How about Harmon Brothers, brokers, here do you know them?

A. Yes, sir.

Q. Did Harmon Brothers ever offer to sell you soft pork?

A. No, sir.

Q. Do you know of anybody they ever did offer to sell soft pork to?

A. No, sir.

Q. Did Hulsey, Bessent & Company ever offer to sell you soft pork?

A. No, sir.

Q. Do you know of anybody that they ever did offer to sell soft pork to?

A. No sir.

757 Q. Do you know anybody that O. C. Holland offered to sell any soft pork to?

A. No, sir.

Q. Do you know anybody that Hatley Brothers ever offered to sell any soft pork to?

A. No, sir.

Q. Do you know of anybody that T. C. Saussy & Company ever offered to sell any fresh pork to?

A. No sir.

Q. I believe you testified you didn't know about Savage & Radavata?

A. No, sir.

Q. Saint Louis Independent Packing Company, do you know anybody they ever offered to sell soft pork to?

A. No, sir.

Q. C. E. Smith & Company, do you know of anybody that they ever offered to sell any soft pork to?

A. No, sir.

Q. J. W. Schneider, did they ever offer to sell any soft pork to anybody that you know of?

A. No, sir.

Q. Wilson & Parker Company, did they ever offer to sell any soft pork to anybody that you know of?

758 Q. Do you know that concern?

A. Yes, sir.

Q. Did they ever offer to sell any soft pork to you?

A. No, sir.

Q. O. H. Wright, how about them?

A. None at all.

Q. C. W. Zarring & Company, do you know about that company?

A. Yes, sir, wholesale grocers.

Q. Did they ever offer to sell you any soft pork?

A. No, sir.

Q. Do you know anybody they ever did sell any soft pork to?

A. No, sir.

Q. Now, Mr. Miller, take these names of concerns which Mr. Horton has asked you about—did you meet the representatives of those companies from day to day in a general way and know what they were doing?

A. Very few of them.

Q. Now, Armour & Company, did you meet their representative from time to time?

A. Yes, occasionally.

Q. Do you know about how much pork product Armour & Company are selling in the Jacksonville market?

759 A. No, sir.

Q. Much or little.

A. Quite a little.

Mr. Horton: By that answer do you mean they sell much?

A. Yes, sir.

Q. What facilities have they for selling?

A. Thel haul by truck direct from their plant.

Q. They have a branch house here? ?

A. Yes, sir.

Q. And a plant here?

A. Yes, sir.

Q. Now take Morris & Company, do they sell much or little?

A. I have no way of knowing the volume of their business.

Q. Do you know whether they have a branch house here?
A. Yes, sir.
Q. Do you know what their facilities are for selling?
A. No, sir.
Q. Take Cudahy & Company, do you know whether they sell much or little?
A. No, sir.
Q. Do you know what the facilities they have for selling are?
760 A. No, sir.
Q. Have they a branch house here?
A. Yes, sir.
Q. And salesmen?
A. Yes, sir.
Q. Have you any idea how many salesmen they have?
A. They have three in the City.
Q. And do they canvass the trade continuously?
A. Yes, sir.
Q. Morris & Company have a branch house here?
A. Yes, sir.
Q. And they have salesmen?
A. Yes sir.
Q. And what trade do they canvass?
A. General trade.
Q. How many salesmen have they?
A. I don't know.
Q. Do you know whether or not they have more than one?
A. I don't know.
Q. Then Wilson & Company, do you know what facilities they have?
A. No, sir.
761 Q. They have a branch house here?
A. Yes, sir.
Q. Do they do much or little business.
A. I couldn't say how much they sell.
Q. Take Swift & Company, did you say they sell much or little?
A. I don't know their capacity.
Q. Do you know what their facilities are?
A. About the same as the rest I suppose.
Q. About the same as the other four you have mentioned?
A. Yes, sir.

Q. Do you know of any reason why Armour should sell on the market for less than the other four?

A. The only reason I know is that they get the stuff here to the plant and deliver it by truck to town,—don't have to transfer it by rail.

Q. Where does this stuff come from that Armour gets by truck?

A. Right here in the City.

Q. Now take these other concerns, Kingan & Company, does Kingan & Company sell much or little?

A. I have no way of knowing.

Q. Has he got a branch house here?

762 A. Yes, sir.

Q. Do you know what selling facilities they have?

A. No, sir.

Q. Brown Meacham & Company, sell much or little.

A. They are brokers, I don't know what they sell.

Q. Do you know what class of stuff they offer to sell?

A. No, sir.

Q. Do they ever call on you?

A. No, sir.

Q. P. A. Degnan, does he sell much or little?

A. I don't know what he sell, he sells, bacon and hams.

Q. A broker?

A. Yes, sir.

Q. Do you know how many salesmen he has?

A. He has none but himself.

Q. Loyd & Gray, do they handle much or little?

A. I don't know sir.

Q. What is Loyd & Gray?

A. They are brokers?

Q. What do they sell?

A. I don't know.

Q. They never call upon you?

763 A. No, sir.

Q. Do you know whether they have any salesmen at all?

A. No, sir.

Q. Do you don't know or he does not?

A. I don't know.

Q. Do you know who Gray represents?

A. No, sir.

Q. Hamlin Brothers, or Harmon Brothers, what are they, brokers?

A. Yes, sir.
Q. Do they sell much or little?
A. I don't know sir.
Q. Do you know whether they have any salesmen at all?
A. No, sir.
Q. Do they ever call upon you?
A. No, sir.
Q. Do you know what they sell?
A. No, sir.
Q. Hulsey Bessent & Company, are they brokers?
A. I think so.
Q. Do they sell much or little?
764 A. I don't know sir.
Q. Do they have any salesmen?
A. I don't know that.
Q. Do they ever call upon you?
A. No, sir.
Q. Do you know what they offer to sell?
A. No, sir.
Q. O. C. Holland & Company, are they brokers?
A. I don't know them.
Q. Never heard of them?
A. No, sir.
Q. Hatley Brothers, are they brokers?
A. I don't know sir.
Q. Did you ever heard of them?
A. No, sir.
Q. T. C. Saussy & Company are they brokers?
A. I think so.
Q. Do you know whether they sell much or little?
A. I don't know sir.
Q. Did they ever call upon you?
A. No, sir.
Q. And you don't know what they offer to sell?
765 A. No, sir.
Q. Savage & Radavata, are they brokers?
A. I don't know.
Q. Have they any salesmen?
A. I don't know.
Q. Do they call upon you?
A. No.
Q. Do you know what they offer to sell?
A. No, sir.
Q. Do you know whether they sell much or little?

A. I don't know sir.
Q. The St. Louis Independent Packing Company, what is their standing in the market, brokers?
A. They have only recently come here, they have salesmen selling on a brokerage basis.
Q. One salesmen?
A. Yes sir.
Q. Do they sell much or little?
A. About a car a week.
Q. Would you call that much or little?
A. Small busines, one car.
Q. How much busines does your firm handle a week on an average?
766 A. I don't know right off how much.
Q. Do you handle a car a week?
A. A car a week of everything, I guess. We buy from a good many people, don't buy a car from any one.
Q. Do you think what you would buy from all will aggregate a car a week?
A. Yes, sir.
Q. How many little packing concerns are there in the City, if you know State?
A. I don't know.
Q. C. E. Smith & Company,—do you know whether that concern sells much or little?
A. I don't know.
Q. Do you know what it is—a broker?
A. A broker, I think.
Q. Do you know whether or not it has any salesmen?
A. No, sir.
Q. Do they offer to sell you goods?
A. No, sir.
Q. Do you know of anybody they ever offered to sell soft pork?
A. No, sir.
Q. J. W. Schneider, he is a broker?
767 A. A broker
Q. And do they sell much or little?
A. I have no idea, sir.
Q. Did they offer to sell you anything?
A. No, sir.
Q. Wilson & Parker Company, do they sell much or little?
A. I don't know sir.
Q. What are they, brokers?

A. Brokers, yes, sir.
Q. Do you know whether or not they have any salesmen?
A. No, sir.
Q. Have they offered to sell you any goods?
A. No, sir.
Q. Do you know anybody they ever did offer to sell any goods to?
A. No, sir.
Q. O. H. Wright, do they sell much?
A. I don't know, sir.
768 Q. Have they any salesmen?
A. I couldn't tell you.
Q. What are they brokers or packers?
A. Brokers.
Q. Do they ever offer to sell you anything?
A. No, sir.
Q. Do you know of anybody they have offered to sell?
A. No, sir.
Q. C. W. Zarring & Company, what are they?
A. Wholesale grocery.
Q. Do they sell to the retail trade, sell meats?
A. Sell dry salts.
Q. Do they sell much or little?
A. I don't know sir.
Q. Do you know whether or not they sell much or little?
A. I don't know, sir.
Q. Do you know whether or not they employ a man to sell dry salt meat?
A. Yes sir.
Q. Did they offer to sell you?
A. No, sir.
769 Q. Do you ever buy from them?
A. No, sir.

Recross Examination by Mr. Horton.

Q. You are a wholesaler, are you, Mr. Miller?
A. Yes sir.
Q. Is it usual for one wholesaler to call upon another and try to sell him goods?
A. Well, the meat game, it is.
Q. That is, there are exceptions?
A. Yes, sir.

Q. What you mean to say is that sometimes one wholesaler does sell to another?

A. Oh, yes.

Q. Now, when Mr. Taylor, was asking you questions about these various packers offering you soft pork and in a number of cases you answered "no, sir" and he was asking you if you had bought any soft pork?

A. Yes, sir.

Q. When you answered what did you have in mind?

A. Southern pork.

Q. Fresh pork?

A. Yes, sir.

770 Q. Did you answer him about smoked meats or did you exclude that from your answer?

A. No, sir, just fresh pork.

Q. Just fresh pork?

A. Yes, sir.

Q. Now how does trim and quality of the soft pork compare with what it was when you tried to get it back in 1916 and 1917?

A. The trim has improved considerably and the quality is improved, turning out better pork now.

Q. They are turning out better pork now?

A. Yes, sir.

Q. Is it also a fact that the trade is educated up to use fresh pork now better than it was when you first started selling it?

A. Well, I had very little difficulty when we first started. When it came through fresh it was really the sweeter meat, sweeter than Western meat.

Q. As I understand, soft pork is oily,—a considerable waste in handling it.

A. Yes, sir.

Q. Is that right?

771 Q. Some trade like it?

A. Well, we have very little trouble with it with any of the trade now.

Q. Isn't it a fact now that some of the trade will not take it at all?

A. Well, they are freezing it now and it come through in better shape and there is very little objection to it.

Q. In other words you like it better frozen?

A. Yes, sir.

Q. It is more satisfactory for the wholesaler and the retailer and the consumer?
A. Yes, because it comes though in better shape.
Q. It can be handled to better advantage?
A. Yes, sir.
Q. And the wholesaler and retailer like it better when it is frozen?
A. Yes, sir.
Q. To sum up, the pork you used to get and the pork you are getting now commands a better price in the market does it not?
A. We are getting a better price for it, yes, sir.
Q. Now the Jacksonville Cattle Company out here,— they have been in business for the last 6 or 7 years?
772 A. Yes, sir.
Q. And they have been slaughtering hogs all that time?
A. Yes, sir.
Q. And they sell the hogs whole?
A. Yes, sir.
Q. It has been possible for you to buy the whole hogs from them right along?
A. Yes, sir, but I never used them.
Q. You preferred to buy them cut up?
A. Yes, sir.
Q. If you wanted a whole hog there is no reason why you can't get it though?
A. No, sir.
Q. That is to say you can get if from them if you want it?
A. Yes, sir.
Q. You can buy a whole hog out there and cut it up yourself?
A. Yes, sir.
Q. Is it not true a lot of farmers dress hogs?
A. In winter time yes, that is true.
Q. You can buy from the farmers?
773 A. Yes, sir.
Q. That is all soft hogs?
A. Yes, sir.
Q. Also there are a number of hogs raised around Jacksonville?
A. Yes, sir.

Q. There is nothing to prevent you buying one of those hogs alive and dressing it is there?
A. No, sir.
Q. It is not much of a job to butcher a hog is it?
A. No, sir.
Q. All it takes is a butcher knife and a kettle of hot water?
A. Yes, sir.
Mr. Horton: That is all.

Re-redirect Examination by Mr. Taylor.

Q. Now, Mr. Miller, in regard to these soft hogs you can buy from the farmers, first take a butcher knife and a kettle of water, if you wanted one of them, what would you do next?
A. The first thing, I wouldn't want one.
Q. The first thing, would you take your butcher knife and kettle of hot water and carry it around the coun-
774 try?
A. I wouldn't do that.
Q. Leave that for someone else to do?
A. Yes, sir.
Q. It might take you sometime before you could find the hog, might it not?
A. Yes, sir.
Q. Now going back into the matters of improvement in the quality of the soft hogs, do you recollect when the Moultrie Packing Company began to put out its product, at the very start?
A. Yes, sir.
Q. Now, take that time, from then on up to September 1917, is it not your recollection that that improvement was progressive from the time the Company started to operate?
A. Yes, we got more hard hogs right along.
Q. You got more hard hogs every year from the time you started handling them?
A. Yes, the farmers started feeding them better.
Q. Mr. Horton asked you if you had smoked soft meat in mind when you answered the question in regard to whether these various concerns I named handled soft hogs—now, if you had had that in mind would you have changed your
775 answer about any of those?
A. The smoked meat?
Q. Yes?

A. Smoked meat is something I don't use because the cure is too salty.

Q. You don't use smoked meat because the cure is too salty?

A. Yes, sir, haven't got it down mild enough.

Q. Do you know anything about the pork hams,—the soft pork?

A. No, sir. There are lots of them in town but I don't handle them.

Q. Do any of those concerns?

A. No, sir, they are practically all retail business.

Q. Mr. Miller, about how much of your business is retail and how much is wholesale?

A. My wholesale business is done principally with the hotels and restaurants.

Q. You simply call upon the hotels and restaurants,—will your wholesale part of the business amount to as much as the retail?

A. Yes, sir.

Q. You sell as much wholesale as retail?

776 A. Just about the same thing.

Q. Just what does the wholesale part of include?

A. Loins, beefs, hams, shoulders.

Q. Do you sell to any retailers at all?

A. No, sir. We used to sell to two or three small colored markets.

Q. How long ago has it been since you sold to any retail markets?

A. A couple of years ago. We had some come in on Saturday when the others were closed up and buy a pork loin or two, something like that, and pay for it.

Q. Now, what you intend to include in your wholesale business, if I understand you correctly, is the meats you sell to Hotels and restaurants?

A. Yes, sir.

Q. How do those orders come in from hotels and restaurants, from the hotels themselves?

A. Yes, sir.

Q. The hotel will order you to send over a certain amount of beef or pork or loin?

A. Yes, sir.

Q. How will those orders run?

A. All the way from $50 to $75 and some will be $10.

777 Q. For a day's business?

A. Yes, sir.

Q. And you sent in the meats from day to day to the hotels and restaurants as they ordered them?
A. Yes, sir.
Mr. Taylor: That is all.
Thereupon the witness was excused.

At 12:25 o'clock P. M. the hearing recessed until 2:00 o'clock P. M., at which time the hearing reconvened.

By the Examiner: The hearing will come to order.

778 J. A. WISENFELD, called as a witness for the Commission at Jacksonville, Florida, on March 21, 1921, after having been first duly sworn testified in substance as follows (Pages 1317-1343):

That he is engaged in the retail meat business in Jacksonville, Florida, and has been so engaged for seven years; that during the year 1916-17 he handled a large quantity of southern meat packed by the Moultrie Packing Company; that during 1916 about 50% of his fresh meat business was southern meat, and that at times all of his pork loins were southern loins; that he usually bought fresh pork, hams, shoulder head, ribs, pig tails, etc., from the Moultrie Packing Company; that he bought some smoked meats from that concern at the same time during 1916-17; that during the same period 1916-17 a salesman for Swift & Co. called upon him from time to time and offered to sell pork loins and all kinds of pork products; that Sam Smith represented the Moultrie Packing Company in Jacksonville, and that he made his purchases of Moultrie products through him; that he was unable to find the invoices for products purchased from the Moultrie Company except in September 1917, and that the latest purchase was on September 13, 1917; that about that time Sam Smith discontinued selling Moultrie products; that five or six months after this Sam Smith began to represent the Tifton Packing Company and that he made purchases of Tifton products from Sam Smith; that at the present time he buys Moultrie Company products from Swift & Co.

779 W. M. BAKER, called as a witness for the Commission at Jacksonville, Florida, on March 21, 1921, and after having been first duly sworn, testified in substance as follows (Pages 1344-1381):

That he has been engaged in the retail meat business in Jacksonville, Florida, for the past nine years and has branch stores at Tampa, Florida, Savannah, Ga., Charleston, S. C., Richmond, Va., St. Petersburg and Orlanda, Fla., that during the year 1916, just after the opening of the Moultrie Packing Company plant he bought considerable peanut fed pork from the Moultrie Company for his Jacksonville store, Savannah, Ga., store and Charleston, S. C. store and made occasional shipments to Tampa, Fla., during the winter months; that he was unable to locate records showing total volume of business transacted with the Moultrie Packing Company; that most of the invoices and other records had been destroyed; but that his recollection was that his Charleston store used from 3000 to 5000 lbs a week, but that during the winter season in 1916 and 1917 the Moultrie Packing Company account would amount to $3000.00 a week for the three stores at Jacksonville, Charleston and Savannah, and would average $1500.00 per week in the winter time. That the principal products handled were fresh hams, fresh shoulders, pork loins and smoked hams and smoked shoulders; that they were soft and could not be used exclusively; that in Savannah he probably used as much Moultrie products as he did western products, but as Charleston not quite as much as one-half of his sales were Moultrie products, and that
780 he would estimate from 500 to 1000 lbs. of Moultrie products through his Jacksonville store; that he discontinued purchasing Moultrie products in July 1917 or shortly thereafter, and that about that time he heard Swift & Company had bought the Moultrie Packing Company; that he had bought Moultrie products in Jacksonville through Sam Smith and through George Dixon for his Savannah and Charleston stores; that the Moultrie Packing Company had no agent in Charleston; that after Sam Smith and George Dixon discontinued handling the Moultrie account, the Moultrie Packing Company products were sold by Swift & Company in Savannah, Charleston and Jacksonville, where Swift & Company was represented and doing business selling practically all packing house products, but that prior to the purchase of

the Moultrie Packing Company very few fresh hams and shoulders were sold by Swift & Company.

That after Swift & Company secured the Moultrie Packing Company a plant was opened at Tifton by the Tifton Packing Company; another plant was opened at Statesboro and Macon, Ga., during the winter of 1918, and that he began to buy pork products from Tifton and Macon products for his Jacksonville store, and from Statesboro for his Charleston and Savannah stores; that he continued to buy from them as long as they operated; that they are not now doing business; that he also made some purchases in 1918-1919 from the Chipley Packing Company, Chipley, Fla., and from a Packing Company at Waycross, Ga., and Orangeburg, S. C.; that these plants are not now in operation; that Armour & Co. has a plant in Jacksonville and are engaged in packing southern products.

781 *Cross-Examination.*

That he handled practically all Western meats—part native and part Western, at the different places above named; by native he meant Southern pork—soft or peanut fed pork. That he bought soft pork products from the Tifton Packing Company during the Winter season; that that is the only time they used soft pork.

Recross-Examination.

That the Jacksonville Cattle Company has been in business ever since he has been here—nine years or more; that they built a small killing plant and are continuously offering carcass product to this market; that Ferris & Company are building a small plant; that they are selling stuff, but are having it killed at either the Jacksonville Cattle Company or Armour & Company; that he wouldn't be sure, but he thought Armour operated the Tifton Company for about eighteen months; that it was said the plant was closed because there was not sufficient live stock to run the plant; that hogs are better now than they were ten years ago; that he thinks these local packing plants have helped to develop the hogs; that before you could begin to encourage the farmer to raise hogs, you must first establish a market;

The price of cotton was lowest in 1914; that the buy a balo

movement was then inaugurated; that cotton was ten
782 cents then; that to have a plant operate you have to have a satisfactory supply of hogs; that there had never been a plentiful supply of hogs in the South. They have claimed they never could get enough to operate during the Summer months, and in the South there is almost no demand for pork during the Summer months. They would operate four or five months and then would shut down killing plant and smoke out the hams and shoulders that were in pickle. In 1920 the market price for hogs went down; that meant a drop in the market price of live stock and also for the finished products—anyone who was carrying a stock of goods from live-stock that year lost money. It is true that you cannot operate a big plant without carrying a fairly good supply of live stock.

That he understood the Statesboro plant got rid of Dixon, its manager; that after that each man tried to go ahead and run it into the ground.

That the Macon plant was sold to the Allied Packers; that he understood they got their cellars clean and were afraid of the market and did not operate last Winter; that he heard they lost $400,000.

That he understood the Waycross plant was not profitable and they quit operating it; that there was a plant in Orangeburg for a short while and they closed down, but that he did not know why. That in the packing house and meat business it takes strict supervision to make a success of it, and requires efficient management.

783 That of all the plants the people in the South were operating within the past six or seven years, the plants at Atlanta, Moultrie and Jacksonville are the only ones operating in the South today.

That the firms of Swift & Company, Armour & Company, Morris & Company, Cudahy, Wilson & Company, and their predecessors, the S. & S. Company, are in the wholesale meat business in Jacksonville, and have been for the past five or six years; that that is true of the other points mentioned with the exception of Charleston—Swift & Company and Armour & Company are the only packers there; Morris & Company has a branch, but it don't amount to much.

784 The Examiner: The objection will be noted, and the motion to strike will be noted.

Recross Examination by Mr. Horton.

Q. That is still your personal opinion you are giving now, is it Mr. Baker?

A. I suppose so, it could not be otherwise.

Mr. Horton: I move to strike the last answer of the witness on the ground it is his personal opinion.

The Examiner: The motion to strike will be noted.

Thereupon the witness was excused.

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785 Mr. Taylor: Mr. Examiner. Copies of certain letters from J. W. Clark Company to the Andalusia Packing Company have been heretofore offered in evidence but were not received for the reason they were copies of letters and all efforts had not been made to secure the originals.

Since that time subpoena has been served upon J. L. Thweatt, Manager of the Andalusia Plant of Swift & Company, requiring him to produce originals of these letters and it appears from his testimony that the originals has been destroyed. I therefore, again offer the copies which have been previously offered and marked for identification from "X" to "Z," both letters inclusive, and will ask that they be received in evidence and marked and marked in the same way in which they are marked for identification.

Mr. Horton: We object to the offer on the ground the proper foundation has not been laid for the admission of these letters. And also that they are ex parte statements of J. W. Clark and not of the Andalusia Packing Company. And also upon the ground they are incompetent and immaterial and have no bearing upon the issues in this case.

The Examiner: The letters will be received in evidence and marked Commission's Exhibit Nos. 117 to 132, inclusive.

786 Wednesday, March 23, 1921.

Federal Building, Jacksonville, Fla.

The Hearing met pursuant to adjournment.

Appearances: The same as of Tuesday, March 22nd, 1921;

The Examiner: The Hearing will come to order.

J. W. BRYCE, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your name?
A. J. W. Bryce.
Q. What is your business?
A. Manager for Swift & Company, Jacksonville, Florida.
Q. Are you the branch manager for Swift & Company here?
A. Yes, sir.
Q. How long have you been such manager?
A. Since February, 1909.
Q. How long have you been in the employ of Swift & Company?

787 A. Since 1900.
Q. Continually?
A. Yes, sir.
Q. Mr. Bryce, are you in charge of the books and accounts of the Jacksonville branch of Swift & Company, that is, are they under your supervision and control?
A. Yes, sir, all the business.
Q. And were you served with subpoena to appear here and bring the ledger, journal and other books and accounts of Swift & Company?
A. Yes, sir.
Q. And other records showing purchases of meat, and meat products of the Moultrie Packing Company during the year of 1917?
A. Yes, sir.
Q. Now will you please state what you have done in the way of producing these records?
A. Well, we had a careful search made through the records

and got all purchases we could find through the year 1917, and all that we could find you have in your hands.

Q. And it is presented here in the form of a statement showing the first entry July 20th, 1917, and the last entry on November 1, 1917?

788 A. Yes, sir.

Q. And does that represent all of the sales of the Moultrie Packing Company to the Jacksonville branch of Swift & Company during the year 1917, up to and including the year 1917?

A. Yes, sir.

Mr. Taylor: I offer in evidence the statement produced and testified to by the witness.

Mr. Horton: There is no objection on the ground that this statement and those records kept in the books there and which agree with the books, that they are not regular and properly kept, and that this is a correct statement. But we do object as to the materiality and competency of this evidence as to the issues in this case. Does that make my meaning clear?

Mr. Taylor: I think it is very clear.

The Examiner: The objection will be noted. The papers will be received in evidence marked Commission's Exhibit No. 140.

Q. Now, Mr. Bryce, referring to this paper which you have produced, Exhibit No. 140, I will ask you how it was paid for, by the Moultrie branch of Swift & Company,—that is, with whom was the settlement made, or to whom was

789 the payment made?

A. The items of July 20th, in which $4958.36 was paid to Moultrie Packing Company.

Q. That was paid by the Jacksonville branch?

A. Yes, sir, to Moultrie Packing Company. The rest was paid by Swift & Company Jacksonville, Florida, to Swift & Company Chicago.

Q. Now, Mr. Bryce, can you state what products were covered by these various invoices shown upon this Exhibit sheet No. 140?

A. It covers the entire line of pork products, dried, salt, smoked and fresh meats.

Q. That is the line bought and sold by the Moultrie Packing Company?

A. Yes, sir.

Q. Now for what purpose did this branch house buy these products, to sell to the general trade?

A. We sold to the general trade, yes, sir.

Q. And what territory does your branch cover within its general trade?

A. We go down the East Coast Railway south to Fort Pierce, work the coast line to Ocala or Dunellon, we go
790 west to Live Oak to all the entire mid-territory.

Q. Of course you cover the City of Jacksonville?

A. We work that.

Q. Now, did you find the purchases of the Jacksonville branch of Swift & Company from Moultrie & Company after November 1st, 1917 during the year 1917?

A. Now, do you want from the Moultrie Packing Company or the Moultrie plant?

Q. You can make your answer full?

A. I made purchases from Swift & Company, Moultrie, yes, sir.

Q. Your answer I assume is based upon the fact that the physical assets of the Moultrie Packing Company were conveyed to Swift & Company after November 1st, 1917?

A. No, I didn't make that statement.

Q. No, I just asked you if that was what your answer was based upon?

A. We made purchases from Swift & Company Moultrie —now, the Moultrie plant may still be in existence so far as I know.

Q. You know it is in existence today?

A. I say, the Moultrie Packing Company may still have been in existence so far as I know.

791 Mr. Horton: The Respondent admits upon the record that on November 8, 1917 the physical assets of the Moultrie Packing Company, a corporation, were sold to Swift & Company, a corporation, and so far as the plant there was concerned it was operated under the name and by Swift & Company, a corporation at Moultrie, Georgia.

Q. Now, Mr. Bryce, the plant at Moultrie, Georgia, formerly owned by Moultrie Packing Company is now known as the Moultrie plant of Swift & Company, is it not?

A. Yes, sir.

Q. Now I show you an another paper showing an entry of items made November 5th 1917 to December 4th, 1917, I will ask you what that paper represents?

A. That represents purchases made from Swift & Company, Moultrie, Georgia.

Q. Purchases made from Swift & Company, Moultrie, Georgia?

A. From November 5th to January 1st, that is, the balance of 1917 purchases.

Q. The total purchases for the year 1917 after November 3rd?

A. Yes, sir.

Q. Well, by whom was this paper made out?

792 A. I had my office—the office manager to make it out.

Q. Is it a complete transcript of the sales of Swift & Company, the Moultrie branch, to the Jacksonville branch?

A. All that I could find.

Q. The books are properly kept and correct books of the accounts are they?

A. Yes, sir.

Mr. Taylor: I offer these sheets in evidence, assuming that there will be no objection on the ground that it is a copy, or transcript of the books, rather than the original records.

Mr. Horton: There is no objection upon the ground that it is a copy,—or a statement from the books. But, I object to the competency or materiality as evidence. It is not pertinent to any of the issues in this case. I object to the competency and materiality of this evidence as not tending to prove any issue in this case.

The Examiner: The objection will be noted and the paper will be received in evidence, marked Commission's Exhibit No. 141.

Q. Now, Mr. Bryce, can you state what these

793 entries do represent, the purchased of the Jacksonville branch, what products?

A. Represents fresh pork cuts, sweet pickled meats and dry salt meats.

Q. All pork or some beef?

A. All pork.

Q. Did that include the full line of products bought up at the Moultrie plant of Swift & Company?

A. Yes, sir.

Q. And were these products sold in the regular course of business of the Jacksonville branch of Swift & Company throughout its territory?

A. Yes, sir.

Q. And how did the Jacksonville branch of Swift & Company pay for these shipments?

A. They were paid for by check.

Q. And your check went where?
A. We paid by check to Chicago.
Q. You paid by check to Swift & Company of Chicago?
A. Yes, sir.

Cross-Examination by Mr. Horton.

Q. Now, Mr. Bryce, I will ask you if all these items which were settled by check to Swift & Company, Chicago,
794 which includes the items on both Exhibits No. 140 and 141, with the exception of the first entry on Exhibit 140, dated July 20th, 1917, in figures, $4958.36, was not kept on your books in your F. O. B. Merchandise account?
A. Yes, sir.
Q. And is it not a custom under the bookkeeping system of Swift & Company for all items so recorded to be paid by check to Swift & Company of Chicago?
A. Yes, sir.
Q. And that includes payment for purchases from Swift & Company and other concerns, such as cheese account and eggs account?
A. We usually make a settlement with Chicago. We settle with Swift & Company and they settle with the purchaser. They settle with the man whom we make the purchase from. That is the way we handle it.
Q. Now do you mean to say in all cases they make the purchase for you?
A. No, not in all cases. They make large purchases for us. If we buy a case of eggs locally we pay for them, but all large purchases from the west, we buy them and they settle with the seller.
Q. Then that is what you mean to say when you make large purchases they settle with the seller and you buy
795 them?
A. Yes, sir.
Q. But butter and eggs and cheese, such things like that, they let you order that and they pay you for it and you pay the seller?
A. Yes, sir, sure. Where they make the purchases and pay the shipper we pay them.
Q. Now I will ask you this: This item 140 representing purchases by you from the Moultrie Packing Company, were they purchases by you from that house?
A. Do you mean whether we placed the order direct?

Q. Yes?
A. No, sir, we usually place the order through Chicago.

Redirect Examination by Mr. Taylor.

Q. Mr. Bryce, can you explain why on that order, this first order, July 20th, 1917, on Exhibit No. 140, don't appear upon the F. O. B. account, but was paid for direct to Moultrie?
A. Why, no, I don't recollect any of the circumstances connected with that.
796 Q. Do you know any reason why that entry should have been treated in any different way from the other entries appearing on the same exhibit?
A. No, I don't.
Q. And if you find all these other entries were properly kept on this F. O. B. account, why should not the first entry have been carried on the F. O. B. account?
A. I don't know, do you mean to ask why they should not have carried it in the same place?
Q. That is the idea.
A. Oh, I presume it may have been a direct purchase from Moultrie, I don't know.
Q. Do you mean to say that you think the order for that first item, July, 1917, was transmitted directly from Jacksonville to Moultrie and then the others were transmitted from Jacksonville to Chicago?
A. Well, it could have been, that way, I don't know why.

Recross Examination by Mr. Horton.

Q. You mean by your answer, Mr. Bryce, that the circumstances are just possible as you have mentioned?
A. No, I don't remember the circumstances relating to that order.
797 Q. Now, I will ask you if the prices paid for the items represented by this Exhibit 140 and 141 was the market price that prevailed at the time?
A. Yes, sir.
Mr. Taylor: Now, I object to that unless the witness shows that he knows what the market price was at the time.
The Examiner: The objection will be noted.
Q. If you wanted to know the market price at that time it would be the price paid for these goods, would it not?

A. Yes, sir.
Mr. Horton: That is all.
Thereupon the witness was excused.

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798 At 7:30 o'clock the hearing was reconvened.

The Examiner: The hearing will come to order.

SAMUEL T. SMITH, being called as a witness, was first duly sworn, and testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name?
A. Samuel T. Smith.
Q. Where do you live?
A. 227 West Union Street.
Q. In the city of Jacksonville, Florida?
A. Yes, sir.
Q. In the years 1916 and 1917, up to the latter part of that year, where were you living?
A. In Jacksonville.
Q. Were you engaged in business in Jacksonville at that time?
A. I was.
Q. What line of business?
A. Packing house products.
Q. Were you connected with any particular concern?
799 A. I was.
Q. What was that concern?
A. The Moultrie Packing Company of Moultrie, Ga.
Q. When, as near as you can remember, did you become connected with the Moultrie Packing Company?
A. Why, it was during October of 1916. September or October, 1916.
Q. And at whose solicitation?
A. Why, Mr. Weeks, a friend of mine had received a letter from Moultrie Packing Company and asked if he could take on the account and if he could not would he recommend some broker selling the retail trade for that, and Mr. Weeks called me up about it. I wrote the house and I had a letter from them.

Q. Do you mean the Moultrie Packing Company, by the "house"?

A. Yes, sir. And I had a letter from Mr. W. C. Vareen, their president.

Q. Have you got that letter now?

A. No, sir. I haven't got it.

Q. Do you know where it is?

A. Why, some time ago, I cleaned out my desk and those letters—I have never been able to find most of them.

800 They were destroyed.

Q. You mean you searched for the letters and papers and accounts?

A. Yes, I have.

Q. Now, will you state what Mr. Vareen stated to you in that letter?

A. He said that he was in receipt of my letter and that if it was agreeable he would like to see me at Moultrie at my convenience about representing them, the concern, in this city.

Q. That was about representing the Moultrie Packing Company?

A. Yes, sir.

Q. Did you go to Moultrie?

A. I did.

Q. And whom did you see?

A. I saw Mr. Vareen and Mr. Brooks.

Q. What was said and done there?

A. Well, at first they didn't want to give me what I wanted, but finally they postponed the deal until after dinner. And then they agreed to give me what I wanted and I left that night.

801 Q. Well, now what were you to do for what you were to get?

A. I was to look after their products here, selling their pork products.

Q. Do you mean here in Jacksonville?

A. Yes, and other places, like Fernandino, and with the privilege of selling in Tampa.

Q. How far did this privilege go, did you have a right further than Tampa?

A. No, I just had one customer there. As I wrote to the house I had one out there and I had sold to them before—Baker Brothers, and they told me alright to go ahead and sell them.

Q. Now, that gave you the exclusive business in Jacksonville?

A. Yes, sir.

Q. Suppose those sales were made as a result of orders sent direct from Jacksonville to Moultrie Packing Company, were there any arrangements made for such cases?

A. Yes, I was to get credit for all sales out of Jacksonville, whether the Moultrie—whether I solicited orders or not?

Q. Did you get commission on the sales?

802 A. I did.

Q. What were you to sell for Moultrie Packing Company?

A. I was to sell everything pertaining to pork products, their full line, in other words, such as shoulders—fresh shoulders, hams and loins and smoked meat and dry salt meat and lard.

Q. Any lard?

A. Yes, sir.

Q. Pork trimmings?

A. Yes, sir. All that pertains to pork products. Spare ribs, pig tails, tongues, all and anything pertaining to a hog, I had to sell.

Q. Now, when did you start in selling these products for the Moultrie Packing Company?

A. As I said—well, let me see—it was about September, 1916.

Q. September 1916?

A. Yes, sir.

Q. As you commenced to sell these products, did you find any difficulty in disposing of them? Did you find that there was any prejudice against the Moultrie Packing Company?

A. When I first started out?

Q. Yes.

803 A. No, sir, I did not.

Q. By the way what was the character of products put up by the Moultrie Packing Company?

A. The quality of it?

Q. Yes. How was it known in the market?

A. It was known in the market as soft pork.

Q. Yes, and had the soft pork been sold in this market to any extent before?

A. No, sir, very little.

Q. What kind of pork had been sold here?

A. Principally western pork.
Q. And who was selling that?
A. Swift & Company, Armour, Kingan, Morris, and others.
Q. And Swift & Company were canvassing the territory at the time you commenced selling soft pork products?
A. Yes, sir.
Q. Now, when these salesmen were selling western pork, when you were selling soft pork, do you know whether or not they made any statements, any representation to the people of any form regarding the soft pork?
Mr. Horton: We object to that on the grounds that it is incompetent and immaterial and has nothing to do with
804 this case. It is mere puffing on the part of the salesman, if any was made.
The Examiner: The objection will be noted.
A. Why, yes, thre was some comment made that the western pork was far superior to that of soft pork.
Q. And how did these statements reach your ears?
A. From what they told me.
Mr. Horton: That is objected to. I move to strike the answer as hearsay.
The Examiner: The move to strike will be noted.
Q. Now, as you went about trying to sell soft pork what did the trade say to you regarding the character of soft pork? —I refer now to the time when you first started?
A. They all claimed it sold pretty well, but it would not hold up like the western pork, that they had made much on it and were going to still continue using it.
Q. And as a broker what success did you meet with as time progressed?
A. Each month I increased the sale.
Q. Did you keep your old customers?
A. Yes, I did.
Q. Did you get any new ones?
A. I did.
805 Q. And did you build up a fairly large volume of trade?
Mr. Horton: I object to that question as calling for an indefinite answer.
The Examiner: The objection will be noted.
A. Yes, sir, I did.
Q. Now, Mr. Smith, will you state to the best of your abil-

ity just how much volume you did build up, what volume of trade.

A. Well, including cars,—I had a car in every week with extra stuff coming in about the first part of the week, Tuesday. I suppose I sold 30 to 60 thousand pounds, some times —some months it would go over that.

Q. During how long a period?

A. Say for six months.

Q. 30 to 60 thousand pounds for how long a period?

A. Six months.

Q. Was that all that you sold in six months?

A. Yes, sir. As I have said, you see they have certain months what they call very heavy and other months what they call very light. In other words, when the summer approaches they haven't got much stock to offer.

Q. Yes, I see—but I think you misunderstood my
806 question. This 30 to 60 thousand pounds was sold over how long a period—how long a time, how long a period of time were you in selling this 30 to 60 thousand pounds, a week or a month—

A. Oh, yes, that is the average for a week.

Q. Was that the average throughout the year or the average during the six months of winter?

A. During the six months only.

Q. How much would it average during the other part of the year.

A. Oh, it would average around 10 to 20 thousand pounds I suppose.

Q. And during what months of the year would it average around 10 to 20 thousand pounds?

A. May, June, July, August and September.

Q. That is five months?

A. Yes, sir.

Q. How about the other seven months in the year?

A. Well, they were alright.

Q. So your average during the other months—

A. It would be about 30 to 60 thousand pounds.

Q. As you originally stated that is for during the other seven months you would average from 30 to 60 thousand
807 pounds a week?

A. Yes sir.

Q. That is what you want your answer to show?

A. Yes, sir.

Q. Were you selling this soft pork for the same price this western product would bring?

A. No, sir, there was a difference of from three to five cents under the western meat.

Q. That is from 3 to 5 cents per pound?

A. Yes.

Q. As time progressed did you continue to build up and increase the volume of your business. that is comparing the trade on one year one year with another?

A. Each season—each month showed an increase.

Q. How long a time did you have this account?

A. I had it I suppose about two years, as near as I can remember.

Q. Then were you correct in saying that you first went to Moultrie in September, 1916?

A. As near as I can remember it was sometime in 1916, it might have been 1915. I am not sure.

808 Q. Are you quite certain to have the accounts for two years?

A. Some where in that neighborhood. I could not say to save my life. It was some time about that.

Q. Are you sure it was more than a year?

A. Oh, yes, sir. It was more than a year.

Q. Do you know when you ceased to handled Moultrie pork?

A. It was the latter part of July.

Q. About what year?

A. I think it was about 1917.

Q. And you are quite certain—I will again ask you that you handled it for a period of about two years continuously up to July or August 1917?

Mr. Horton: Please, Mr. Examiner, the witness has answered that question at least twice.

Mr. Taylor: There is no doubt about it on the record, but the witness seems to be confused as to the date he first commenced to sell.

A. Well, it might have possible have been 1915 or 1916—I know that I had it over a year. I know I had it over a year and a half.

809 Q. And do you now think that you ceased to handle it in 1917?

A. Yes, sir.

Q. And do you want to change your testimony to read

that you had your interview with Mr. Vareen in the year 1915 instead of the year 1916?

A. Yes, sir. I think 1915 would strike it about right.

Q. Now came down to about the time that you handled Moultrie pork will you state what did happen with regard to the affairs of the Moultrie Packing Company?

A. I have heard that—

Mr. Horton: I object to what the witness heard, as hearsay.

The Examiner: The objection will be noted.

Mr. Horton: Mr. Examiner, I think these questions are so palpably and fairly open to objection that they ought to be ruled upon now.

A. I heard there was a rumor out—

Mr. Horton: Again I object on the same grounds. He said that he heard a rumor, that is hearsay.

The Examiner: The objection will be noted.

Q. Did you receive any letter from anybody?

810 A. No, sir, I did not.

Q. Why did you stop handling the products of the Moultrie Packing Company?

A. Because Swift & Company bought out Moultrie Packing Company.

Mr. Horton: I object to that and move to strike the answer of the witness on the grounds that it is hearsay.

A. This was not hearsay—this was straight facts.

Mr. Horton: I object to the testimony as not being competent and as being irrelevant and immaterial and not being within the knowledge of this witness.

The Examiner: The objection will be noted.

Q. Now, did this information come to you—

A. I first saw it in the Savanah paper.

Q. What next?

A. I wrote the house about it, they came back denying the fact.

Q. How did you meant the "house"? Who do you mean by that?

A. Moultrie Packing Company, the manager, Mr. Brooks, said he knew nothing of it at all. He would advise me in ample time.

Q. When was that?

A. In 1917.

811 Q. What month?

A. I think it was January or February.

Mr. Horton: I again renew my objection and my motion to strike out the testimony of the witness. His statement that Swift & Company had bought out Moultrie Packing Company, shows by his testimony that he was basing his statement upon newspaper and rumor,—newspaper accounts and rumors.

Q. Mr. Taylor: Mr. Examiner, I think when I get through with the witness it will be disclosed that the way he learned it was entirely beyond criticism, even by my friend on the other side.

The Examiner: The motion to strike will be noted.

Q. Now, did you get any further letters from the Moultrie Packing Company upon the subject?

A. No, sir, I did not.

Q. Did you get any further letters from the Moultrie Packing Company about prices—prices you were expected to get?

A. I did. About prices.

Q. Now, did you get any information from Moultrie Packing Company in any way regarding the acquisition of the stock of that Company—being bought by Swift & Company?

A. No, sir I did not.

812 Q. Did you have any talk with any of the officers of the Moultrie Packing Company regarding purchase of stock by Swift & Company?

A. No. sir, I did not.

Q. Did you make a trip to Moultrie, Ga., after that one you have spoken of in 1915?

A. Yes, sir.

Q. When was it when you went there again?

A. Why, I think it was the last of that same year.

Q. You went to Moultrie the last of that same year—did you go down again after that?

A. Yes, sir.

Q. When was that?

A. I think it was the first part of September, 1917.

Q. Yes. Now that time you went who did you see?

A. Whom did I see?

Q. Yes.

A. I saw C. L. Brooks.

Q. Who is C. L. Brooks?

A. He was the manager at the time for Moultrie Packing Company.

Q. And what did C. L. Brooks say to you?

813 A. Why he told me that there was two other parties—that there were others wanting to put up a packing house, that he would take care of me.

Q. Why was it necessary for him to take care of you?

A. Well, I had no packing houses, what I had I had to give up to take on the Moultrie Packing Company. Therefore when I lost Moultrie Packing Company I lost all that I had.

Q. How did you lose Moultrie Packing Company? What was the occasion of your losing it?

A. Swift & Company bought them out.

Mr. Horton: I move to strike that out.

The Examiner: The motion will be noted.

Q. Did Mr. Brooks tell you that Swift & Company had bought stock of Moultrie Packing Company?

A. He did.

Q. Was this when you were at Moultrie that last time.

A. Yes, sir. I was on my way from North Carolina. I stopped over then to see him.

Q. Now, why didn't you go on and represent Moultrie Packing Company notwithstanding Swift & Company had bought the stock?

A. Well, I figured out that sooner or later they would handle this stuff at this branch house here.

814 Q. Do you know whether they handled it here at that time?

A. They handled some—yes.

Q. Now, you said a short time ago that you received a letter from Moultrie Packing Company regarding prices, have you got that letter with you?

A. Do you mean from Moultrie Packing Company or Swift & Company?

Q. Well, from either one.

A. No, sir, I haven't got the letters.

Q. Have you searched for them?

A. I have.

Q. Do you know where it is?

A. I could not find them.

Q. Now, what did the letter say?

A. You mean the entire letter?

Q. What did it say about prices?

Mr. Horton: I object upon the grounds that that is not the

best evidence, the letter would be the best evidence. The letter itself or copies.

Mr. Taylor: We would be very glad to have the letter ourselves if they can produce it.

Mr. Horton: I object further on the grounds that no
815 proper foundation has been laid for this secondary evidence.

The Examiner: The objection will be noted.

Q. Mr. Smith, you were served with subpoena to appear here were you?

A. Yes, sir.

Q. And that subpoena required you to produce certain things, does it not?

A. Yes, sir.

Q. What were the things that you were required to produce?

A. All books and accounts and other records showing the amount and kind meat and meat products sold by Moultrie Packing Company during the years 1916 and 1917 including the names and addresses of the customers to whom the products were sold. Also the correspondence between the Moultrie Packing Company and myself down to June 1st, 1917 or until the year 1918.

Q. That is correct.

A. Yes, sir.

Q. And are those the things for which you have searched?

A. I have.

Q. Mr. Taylor: Now Mr. Examiner, we wish to call
816 your attention to the fact that the subpoena to the officers of the Moultrie Packing Company or rather the branch of Swift & Company, all correspondence regarding the sale of those products was to be produced, and the testimony was that the correspondence had been destroyed.

Mr. Horton: Mr. Examiner, I don't believe that Moultrie manager or anyone at that plant was asked to produce correspondence with Mr. Smith.

Mr. Taylor: That was the purport of the testimony as I recall it.

Q. Now, Mr. Smith, I will again ask you what that letter said regarding prices?

Mr. Horton: And I renew my objection.

The Examiner: The objection will be noted.

A. Why, I got the letter from the Moultrie Packing Com-

pany enclosing their price lists telling me that their prices had advanced and to hold to these prices.

Q. Now, how did those prices compare with the preceding prices?

A. From 3 to 5 cents a pound higher and one item was 12½ cents higher.

Q. How did the preceding prices compare with the prices of western meat?

A. Do you mean the prices I got—

817 Q. The preceding prices at which you had been selling soft pork, how did they compare with the prices of western pork at the same time?

A. Any where from 3 to 6 cents cheaper.

Q. How did the new prices quoted in the letter compare with the previous prices for western pork at the period covered by that letter?

A. About the same.

Q. Now, did you have any talk with anybody regarding the new prices?

A. I did.

Q. With whom?

A. With Mr. Wallow.

Q. And who is Mr. Wallow?

A. He was at that time manager of the Moultrie Packing Company.

Q. What was it, correspondence or conversation?

A. Conversation and correspondence both.

Q. Now, did you—what did you say to Mr. Wallow and what did Mr. Wallow say to you?

A. I just told him that I could not get those prices, that the trade was kicking about it. I told him that it was out

818 of the question to get those prices. One item I remember quite well, was fresh pork tongues. I had been selling them at 12½ cents a pound, I had customers who used a very large quantity of those and when I got these prices I went and told them that the prices of tongues was $.25,—

Q. Was that the price that you were instructed to sell them for?

A. Yes, sir, I was instructed not to do any changing, to sell at the list prices.

Q. And what did Mr. Wallow say to you about prices at this conversation?

A. Well, he said that he had those prices at Macon, At-

lanta, and other towns, and they were getting them and he didn't see why I could not.

Q. That is what he told you?

A. Yes, sir.

Q. Well did you try to get them?

A. I did.

Q. And in course of your endeavors to get this—to sell the products at those prices, did you meet with any of your customers who had Moultrie products elsewhere than through you?

Mr. Horton: I wish to object to this entire line of
819 testimony and move to strike it out on the grounds that Mr. Wallow was an employee of the Moultrie Packing Company and has nothing to do with this respondent, and upon the further grounds that it is immaterial and incompetent and upon further grounds that it is an exparte statement not binding upon this respondent.

The Examiner: The motion to strike will be noted.

A. Yes, sir. Quite a number.

Q. And from whom did they buy them, if you know?

A. Well, from Armour, Swift, Cudahy.

Q. And at what price? The same prices that you were instructed to quote?

A. No, sir, at less prices.

Mr. Horton: I object to that and move to strike it out on the grounds that that it is hearsay.

The Examiner: The objection and the motion to strike will be noted.

Q. Did any of your customers state to you as a reason that they were not buying from you that they could buy the same things from Swift & Company for less money?

A. They did.

Q. Now, can you recall any particular instance of that?

A. Baker Brothers, Jeffries' Market, and Sanders' Market.

820 Mr. Horton: I move to strike out the two answers as being hearsay and incompetent.

The Examiner: The motion to strike will be noted.

Q. Did you ever see any tickets showing what they were actually buying these same products for from Swift & Company?

Mr. Horton: I move to strike that out on the grounds that it is secondary evidence, unless it is shown that the tickets are authentic.

A. Why yes, I saw some invoices.

Q. Well, are you familiar with Swift & Company's invoices, do you know them when you see them—Swift & Company's invoices?

A. I think I do.

Mr. Horton: I object to that on the grounds that it is testimony that is entirely indefinite. It is not specific enough, it does not give the cut, the kind of product or the size of it, or the date of purchase.

The Examiner: The objection will be noted.

Q. Now, do you remember any particular product for which you saw a ticket or invoice for Swift & Company in which the price for which it was to be sold differed from the price that you were instructed to maintain on the same products?

A. I remember one invoice.

821 Q. What was the invoice that you have in mind now?

A. 100 pounds of smoked ham.

Q. And at what price was that invoiced?

A. At 21 cents a pound.

Q. And at what price were you instructed to maintain a sale of the same kind of smoked ham?

A. 25 cents a pound.

Mr. Horton: I object to this entire line of testimony and move to strike it out on the grounds that it is too indefinite. It is not specific testimony and the kind and quality and date and place is not fixed.

The Examiner: The motion to strike will be noted.

Q. Now, what customer was this?

A. T. H. Sampayrac.

Q. And what was the date of that as near as you can recall?

A. I don't remember the date. I presume though it was around September, 1917.

Q. Now, after this did you continue to sell Moultrie products?

A. No, sir. I did not. I quit right there.

Q. Now, can you fix the date when you did quit?

A. About the last of July, 1917.

822 Q. Why did you fix the date about the last of July?

A. Why do I fix it?

Q. Yes.

A. Because I know around the first of August I went to North Carolina.

Q. And how long were you gone to North Carolina?
A. Until the third or fifth of September—about that time. I think it was the sixth that I got home.
Q. Now, after you got home, do you recall whether you endeavored to make some further sales of Moultrie Products?
A. I might have done that, and I believe I did.
Q. Now, what is your recollection as to your success in that endeavor? What success did you meet with?
A. I met with very poor success.
Q. Now, do you recognize this book which I hand you?
A. Yes, sir.
Q. What is that?
A. It is a stub—a stub book.
Q. Stub book of what?
A. Checks.
Q. Stub book of your bank account?
A. Yes, sir.
823 Q. And this represents checks drawn by you between what dates?
A. Between August 5th 1917,—
Q. And June 26th 1919?
A. Yes, sir.
Q. Now, is it customary for you to collect for goods shipped by Moultrie Packing Company to your customers and remit by check?
A. It was. Yes, sir.
Q. Can you search through those stubs on this book and find when—find checks drawn to the Moultrie Packing Company during this period?
A. Yes, I have, some of them were in there.
Q. Now, will you tell what checks you were able to find in this stub book which showed that checks were drawn to the Moultrie Packing Company in payment of invoices of goods sent out by the Moultrie Packing Company?
A. Well, August 17, 1917, Moultrie Packing Company (Indicating check).
Q. Is that your writing?
A. No, sir, that is my wife's.
Q. And what does that indicate?
824 A. $7.00 on account.
Q. And to whom was that made to order?
A. Moultrie Packing Company.
Q. Now, by whom—not to whom?

A. My wife.
Q. Did your wife have power to sign your name?
A. No, sir, she did not—I just left them.
Q. You left signed checks?
A. Yes, sir.
Q. Were you in town at that time, August 17, 1917?
A. I was not in the city.
Q. Is that check to the Moultrie Packing Company in payment of goods that had been shipped by them?
A. Yes, sir.
Q. To whom were they shipped?
A. To the Globe Market, September 12th, 1917. Moultrie Packing Company, Beldon & Company.
Q. In payment of what?
A. Invoices.
Q. To whom?
A. Beldon & Company.
825 Q. And the next?
A. The next is September 13th, 1917, to Moultrie Packing Company, and for A. S. King, $15.60.
Q. Is that your writing?
A. Yes, sir.
Q. How is this other check, is that your writing? (Indicating.)
A. That is my writing, yes, sir.
Q. That is September, 12th?
A. Yes, sir.
Q. Now, what is the next?
A. September 18th.
Q. What year?
A. 1917.
Q. Mr. Horton: I move that the check book be introduced in evidence, Mr. Examiner, for itself, and can be made an exhibit in the case.
Mr. Taylor: I offer the stub book in evidence.
Mr. Horton: No objection.
The Examiner: The stub book will be received as evidence and marked Commission Exhibit #133.
It was stipulated by the parties hereto, that only the
826 stubs to the Moultrie Packing Company be offered in evidence.
Q. Now, Mr. Smith, will you turn to the stub in this book, Exhibit #133, and find the record of the last check drawn Moultrie Packing Company?

A. October 9th, 1917. Moultrie Packing Company, Cracker Six, $12.28.
Q. What does that $12.28 mean?
A. That is the invoice.
Q. That is the amount of the check?
A. Yes, sir. And the invoice is dated September, 15th.
Q. Of what year?
A. 1917.
Q. And is that the last invoice of which you have any record?
A. Yes, sir.
Q. Have you any recollection of anything later?
A. No, sir.
Q. The number of this check is what?
A. 1053.

827 *Cross-Examination by Mr. Horton.*

Q. Are there hogs raised in and about the vicinity of Jacksonville?
A. Did you say, are there any hogs?
Q. Yes, are there hogs raised about here?
A. Yes.
Q. Farmers raise hogs around here?
A. Yes, sir.
Q. How long have they been doing that?
A. Several years.
Q. Several years?
A. Yes, sir.
Q. Do you want to go back further than that? Do you want to go back ten years?
A. Yes, sir.
Q. Do you want to go back fifteen years?
A. A little further than that.
Q. Now do farmers dress hogs and sell them in Jacksonville?
A. Yes, sir.
Q. And that has been going on for about the same
828 period of time?
A. Yes, sir.
Q. Have you got a local slaughtering plant here called the Jacksonville Cattle Company?
A. Yes, sir.

Q. Haven't they been in business here for about ten years or more?

A. Something like that.

Q. Haven't they been slaughtering hogs and selling them?

A. Yes, sir.

Q. Selling the carcass hogs?

A. Yes, sir.

Q. Now, what is the character of hogs raised in and about Jacksonville as compared with the hogs that are raised around Moultrie, are they soft hogs?

A. Some are soft and some are not.

Q. That is true of both sections, is it not?

A. Yes, sir.

Q. The character is about the same, is it not?

A. About the same.

Q. Then, therefore it is a fact that some have been sold in this market for ten years or more?

829 A. Well, yes, sir. Not the cuts, but the whole hogs.

Q. Not the cuts, but the whole hogs?

A. Yes, sir.

Q. But it is a soft hog?

A. Yes, some are soft and some are not.

Q. Yes, but the percentage runs about the same in both cases—about the same character?

A. About half and half.

Q. Do you think Moultrie hogs are one half hard and one half soft?

A. Yes, sir, as a rule, yes.

Q. You think they are as a rule?

A. Yes, sir. Half hard and half soft.

Q. Half hard and half soft?

A. Yes, sir.

Q. Was it that way when you handled this account?

A. No, sir, when I handled the account, it was beginning to show improvement.

Q. It was beginning to show improvement when you had the account?

A. Yes, sir.

Q. In other words, they were better now?

830 A. Yes, sir.

Q. In other words, there are fewer soft ones now?

A. Yes, there are fewer soft ones.

Q. So more than half of the hogs are hard that come from Moultrie?

A. I should say three quarters.
Q. Three quarters of the hogs that come from Moultrie now are hard?
A. Yes, sir.
Q. That is your best jugdment, and you have had experience handling hogs?
A. Yes, sir.
Q. By the way, what was your business before you represented Moultrie Packing Company?
A. I was a broker.
Q. And what kind of meat did you handle—what kind of goods did you handle?
A. Principally smoked meat.
Q. What accounts did you have?
A. I had Corcoran & Hill & Company.
Q. Where was that?
A. Baltimore.
831 Q. What other?
A. S. Homan & Son's.
Q. Where are they?
A. Baltimore.
Q. And what other did you have?
A. Thomas J. Kurdle.
Q. Where are they?
A. Baltimore.
Q. Did you have any others?
A. Yes, sir.
Q. And what others have you handled since that time?
A. Schludeberge Brothers.
Q. Where are they?
A. Baltimore.
Q. What other accounts did you have?
A. Yes, sir. I had a Mackerel House, a Rice House and a Flour House.
Q. What other meat accounts did you have?
A. None other than what I have mentioned.
Q. About how long have you been handling those accounts prior to the time you took the Moultrie account?
A. Oh, maybe from five to fifteen years, I suppose.
832 Q. Five to fifteen years?
A. Yes, sir.
Q. Then after you quit handling Moultrie products what meat accounts have you handled?
A. After I left Moultrie?

Q. Yes.
A. Tifton Packing Company.
Q. And what others?
A. With the Thomas J. Kurdle Company.
Q. Who was Thomas J. Kurdle Company, where are they?
A. Baltimore.
Q. They are located at Baltimore?
A. Yes, sir.
Q. And what others have you handled since that time?
A. Schludeberge Brothers.
Q. Where are they?
A. At Baltimore.
Q. And what other?
A. That is about all.
Q. You think that is all?
A. Yes, sir.
Q. Now, these Baltimore houses, their products are all cured?

833 A. Strictly.
Q. Strictly cured?
A. Yes, all cured meat.
Q. None of it fresh?
A. No, sir.
Q. The Moultrie account was the first that you had where you handled fresh meat?
A. Yes, sir.
Q. That was your first experience with fresh meat?
A. No, sir, it was not. I handled a little fresh meat for Jacob C. Shaffer and George C. Krier.
Q. Where is Shaffer?
A. Baltimore.
Q. Where is the other man you mentioned?
A. Baltimore.
Q. All at Baltimore?
A. Yes, sir.
Q. Now, that is five or six concerns you have mentioned from Baltimore?
A. Yes, sir.
Q. Now, what was the first one you mentioned?
A. Corcoran and Hill Company, I think.

834 Q. How long did you handle their account?
A. Oh, ten or fifteen years.
Q. And what did you do then, did you sell carload lots?
A. No, sir, I did not.

Q. Were you handling that account the same time you were handling the Moultrie account?

A. No, sir.

Q. Then you didn't have anything prior to the time you were handling the Moultrie account?

A. Yes, sir.

Q. How many cars would you average handling from them?

A. From whom?

Q. Corcoran & Hill?

A. I didn't handle any carload lots from them.

Mr. Taylor: I object to this examination. It is a line of cross examination entirely foreign to the direct examination and I further object to it. I thought possibly counsel had some reason for going into it. I submit this is not proper cross examination.

Mr. Horton: I submit to the Examiner's ruling without argument.

The Examiner: The objection will be sustained.

835 Mr. Horton: Do I understand the Examiner to rule that I cannot question the witness about his experience in the meat business?

The Examiner: You can cross examine him on what was brought out on direct examination.

Mr. Horton: That is what I am doing.

Q. How many cars from Corcoran & Hill?

A. I didn't get any.

Q. What kind of shipments did you get?

A. They came by train,—by freight.

Q. Shipments from Corcoran & Hill came freight?

A. Yes, sir.

Q. Would it be less than a carload?

A. Yes, sir.

Q. By the way, how many pounds of fresh meat would there be in a carload?

A. Some are heavier than others—twenty, twenty five, thirty, I have seen as many as forty.

Q. What is the minimum to a carload, the minimum cars?

A. 25,000 pounds.

Mr. Taylor: I wish to enter my objection to this line 836 of cross examination at this time.

The Examiner: The objection will be sustained.

Q. Is it not true—

Mr. Taylor: Mr. Examiner, I move to strike out the answer to that question.

Mr. Examiner: The motion to strike will be sustained.

Q. Is it not true that you have to get a minimum carload—to get a carload rate you have to get a minimum of ten pounds—ten thousand pounds, is required in fresh meat, in packing house products?

Mr. Taylor: I object to that.

The Examiner: The objection will be noted.

A. Why, yes. But you in getting ten thousand pounds—I believe you pay for 25,000 pounds?

Q. Is it not true you can get a carload rate if you only have ten thousand pounds of fresh packing house products in the cars?

Mr. Taylor: Mr. Examiner, I would like to inquire if counsel for respondent is making this witness his own witness in going into freight rates, or whether this is cross examination?

Mr. Horton: Cross examination and entirely within
837 the scope of the direct examination.

Mr. Taylor: I object. It is entirely out of the scope of the direct examination. Freight rates were not touched upon.

The Examiner: The objection will be sustained.

Q. Now, besides Corcoran & Hill—but first, you never told how much you handled from Corcoran & Hill?

Mr. Taylor: That is objected to.

Q. How many carload lots did you handle in the fifteen years you handled their business?

A. I don't know.

Q. What?

Mr. Taylor: That is objected to.

Q. What is your best guess as to that?

A. I don't know.

Q. How do you estimate it?

Mr. Taylor: I object to that.

A. How does a man estimate it when he can't tell?

Q. Is that the best answer that you can give?

A. Yes, sir.

Q. What was the other Baltimore firm that you mentioned besides Corcoran & Hill?

838 A. Homan.

Q. How did you represent them?

Mr. Taylor: That is objected to, Mr. Examiner.

The Examiner: The objection will be noted.

Mr. Taylor: That is not proper cross examination.

A. About five years.
Q. Covering what period of time?
A. How is that, sir?
Q. I say, covering what period of time?
A. Oh, I don't know, way back there—it was in 1910, something like that.
Q. Five years to 1910, that would be 1915?
A. 1915.
Q. Now, that was all smoked meat, was it?
A. Yes, sir.
Q. And how many carloads did you handle for them?
Mr. Taylor: Mr. Examiner, do I understand that all my objection goes to all of this testimony?
The Examiner: Yes.
A. I never handled any cars.
Q. In the five years that you represented them how many carloads did you handle?
839 A. I could not say?
Q. What per cent? An estimate?
A. I don't know.
Q. Is that the best answer that you can make?
A. Yes, sir.
Q. What is the name of the next firm you mentioned in Baltimore?
A. Kurdle & Company.
Q. Kurdle & Company, was that all smoked or was there some fresh meat?
A. Smoked meat.
Q. All smoked meat?
A. Yes, sir.
Q. For how many years did you buy them?
A. About 15 years.
Q. You represented Kurdle & Company about 15 years?
A. Yes, sir.
Q. Covering what period of time?
A. Well, from 1900.
Q. 1900 to what?
A. 1915 to 1918.
Q. 1915 to 1918?
840 A. No, 1910 to 1915, I said.
Q. How many cars did you handle for them?
A. I never handled any cars.
Q. In the ten years that you represented them how many did you handle?

A. I could not tell you.
Q. What is your best guess?
A. I would not like to guess.
Q. What is the best that you can say?
A. I would not try to say.
Q. Is that the best answer that you can give?
A. Yes, sir.
Q. What is the other Baltimore firm?
A. I believe that is all.
Q. That is three?
A. Yes, sir.
Q. Who is the Baltimore firm that you handled fresh meat for?
A. I handled fresh meat for Shaffer and Kriel.
Q. Now how long did you represent Shaffer?
A. About three or four years.
Q. What period of time?
841 A. About 1905 to 1910.
Q. About five years?
A. Yes, sir.
Q. How many carloads of fresh meat did you sell for them?
A. I never sold any cars of stuff it was all express.
Q. And what kind of products were you selling?
A. Nice goods.
Q. Nice goods?
A. Yes, sir.
Q. Was it pork or beef or mutton or what?
A. Yes, pork cuts.
Q. What kind of cuts?
A. Cuts.
Q. What part of the animal?
A. Pork loins.
Q. Pork loins?
A. Yes, sir.
Q. And how often would you get a shipment of those things?
A. Once a week.
Q. You got in a shipment once a week?
A. Yes, sir.
842 Q. By express?
A. Yes, sir.
Q. And how many pounds would there be in an express shipment?

A. Why, it would vary—one have two—some months it would be one or two thousand.
Q. In other words you got your shipments in—monthly?
A. No, sir, weekly.
Q. You got them weekly?
A. Yes, sir, generally on Friday.
Q. You say that some months it would be as much as two thousand?
A. I mean two thousand a week.
Q. Some weeks it would be that?
A. Yes.
Q. And it came by express from Baltimore?
A. Yes, sir.
Q. Was that sold in the Jacksonville market?
A. Yes, sir.
Q. The express rate from Baltimore to Jacksonville was pretty high, was it not?
A. It was. I believe it was about $3.75.
843 Q. An hundred?
A. Something like that.
Q. And did that pork have refrigeration?
A. No, sir, it didn't.
Q. Did you handle it all the year around?
A. No, sir.
Q. When did you handle it?
A. Only in the winter months.
Q. Only in the winter months, that would be when the weather was very cold?
A. Yes, sir.
Q. That would be two or three months out of the year?
A. About that.
Q. Now, Kriel & Company, was that fresh pork or smoked pork that you handled from Kriel & Company?
A. Mostly smoked. I had very little fresh meat business—very little.
Q. Is it worth speaking about?
A. No, sir.
Q. The volume was so small it is not worth mentioning?
A. That is it.
Q. How long did you represent Kriel?
844 A. Oh, about the same time I did Shaffer.
Q. From about 1905 to 1910?
A. Yes, about that time.
Q. Now, were there any other representatives here be-

sides those you named? Corcoran & Hill, Kurdle, Shaffer and Kriel?

A. No, sir.

Q. Did you ever handle any carload lots from Kriel?

A. No, sir.

Q. Just got shipments?

A. Yes, sir.

Q. And just during the winter months?

A. Yes, sir.

Q. Does that—the winter months also apply to the time you handled Corcoran & Hill?

A. No, sir. I handled their stuff all the year around, because I was not selling fresh meat for them.

Q. Homan?

A. The same thing.

Q. And Kurdle?

A. The same thing.

Q. Now, you were handling Kurdle's account at the same time you were handling Moultrie Packing Company's ac-
845 count, were you?

A. That was the only one.

Q. I understood you to testify before that you didn't have any other account except this Moultrie Packing Company's account?

A. Yes, sir. That was the only one that I had. It was agreed and understood that I was to give up all the others, except Kurdle. I dropped some 7 or 8 houses.

Q. And by that, do you mean you dropped Rice house, flour house?

A. The whole thing. I dropped the whole thing.

Q. And Kurdle was the only meat house that you kept?

A. Yes, sir. We had some kind of an agreement and they allowed me to carry that house. The others I dropped.

Q. That was the only meat account you had after you made the agreement with Moultrie Packing Company?

A. Yes, sir.

Q. So you didn't have any other of these accounts because you were not handling them?

A. I was handling them. I was handling the houses that I gave you the names of.

Q. Well, you previously told me that you handled
846 Shaffer's account from 1905 to 1910?

A. Yes, sir.

Q. And you said you handled Kriel's account from 1905 to 1910?

A. Yes, sir.
Q. So you didn't drop those, they were dropped long before the agreement with Moultrie Packing Company?
A. Exactly. But what I said was I gave up Corcoran & Hill's account and Homan and who was that other?
Q. Kurdle & Company?
A. No, Corcoran & Hill and Homan and Kurdle were the ones that I had at the time I took on the Moultrie Packing Company's account.
Q. Those three houses?
A. Yes, sir, those three houses I had to drop.
Q. The others you had dropped previously?
A. Yes. Schludeberge—
Q. Did you have a written agreement with Moultrie Packing Company or just oral?
A. Oh, just verbal.
Q. And as I understand it you quit handling their accounts—to take on this account?
847 A. Moultrie Packing Company?
Q. Yes.
A. Yes, sir.
Q. And you did that your own free will?
Mr. Taylor: I object to the question. He has stated why he did it and under what circumstances he did it.
Q. Did you employ any salesmen, Mr. Smith?
A. I only had my wife. I just had my wife to help.
Q. Did your wife solicit the trade?
A. She did.
Q. She assisted you in the business?
A. Yes, sir.
Q. You had an office here?
A. Yes, sir.
Q. At Jacksonville?
A. Yes, sir.
Q. Now, were you the main factor in the business or was your wife?
A. How is that?
Q. Were you the main factor in the business or was your wife the main factor?
A. I was.
848 Q. You took charge of the business, you called upon the trade?
A. I did,—yes, sir.
Q. And did your wife call upon the trade all the time or just occasionally?

A. Just occasionally.
Q. That would be when you could not get away?
A. Yes, sir.
Q. She never went out and solicited the trade as a salesman?
A. No, sir.
Q. Did she do her housework while she was representing you?
A. Yes, sir. Well, now, my sister lived at the house.
Q. Well, did she spend her time in the office?
A. Oh, no.
Q. Just a part of the time?
A. Yes, sir.
Q. She came into the office occasionally?
A. Yes, sir.
Q. Did she help with the books?
A. I looked out for most of the books, she did some.
849 Q. I see she did write some of your checks?
A. Yes, sir.
Q. Now, if you should be out of town, who took care of the trade?
A. Why I would leave it with my wife.
Q. Would she then go out and solicit the trade? Or stay in the office?
A. Whenever I would go out of town I would always take orders and the cars would be here, generally, Thursday or Friday, and I would be back in time to unload that car. You see my business from the city—there was not but very little of it.
Q. Now, you have already testified that you went to North Carolina in the first of August, 1917, and you got back in September, 1917?
A. About that.
Q. Now, who took care of the trade while you were gone?
A. Well, I gave up Moultrie Packing Company then.
Q. That is the thing you had given up prior to the time you went away?
A. Yes, sir. And them small accounts I had my wife look after them.
850 Q. You were not interested any further?
A. No, sir.
Q. Now, you testified that you saw a price list from the Moultrie Packing Company and there was one item that was increased 12½ cents a pound?

A. Yes, sir.
Q. What kind of products was that?
A. They were pork tongues.
Q. Do you mean to say that Moultrie Packing Company tried to charge 12½ cents more than other packers were selling the same products for?
A. I mean to say Swift & Company tried to get 12½ cents more—Swift & Company. Moultrie was selling out to Swift & Company.
Mr. Horton: I move that the answer be stricken out. It is not responsive to the question.
Mr. Taylor: I ask that it remain.
The Examiner: The motion to strike will be noted.
Mr. Horton: (To the Reporter) Read the last question.
The last question was accordingly read.
A. I do.
851 Q. You mean to say that the price charged by Moultrie Packing Company was 12½ cents higher than other packers here in Jacksonville were offering pork products for—is that right?
A. Yes, sir.
Q. In other words, for instance, Armour & Company were selling pork tongues for 30 cents a pound Moultrie Packing Company would be asking 42½ cents? Is that right?
A. No, sir.
Q. What do you mean?
A. I mean this—Moultrie Packing Company, their price on pork tongues was 12½ cents and when Swift & Company took it over it was 25 cents, that is what I mean.
Mr. Horton: I move to strike the answer out of the record, on the grounds that it is not responsive to the question.
Mr. Taylor: I think it is. The answer is eminently responsive to the question.
The Examiner: The motion to strike will be noted.
Q. Now, Mr. Smith, you have told us that before, I think that this is the third time you have said it in the record. But what I want to know is if when Moultrie Packing Com-
852 pany gave their raise of price as you have stated of 12½ cents per pound, was their price then 12½ cents more than the market?
A. No, it was about the same.
Q. In other words it was about the same on the market as the other packers?
A. Yes, sir.

Q. They were getting then for their pig tongues the market price?

A. That is, based upon what the western people were charging?

Q. Yes. Well, now, Mr. Smith, to be fair, you will concede that the Moultrie people had a right to get their price for their goods if they could? Did they not?

A. No, not necessarily.

Q. Not necessarily?

A. No.

Q. In other words, it is your opinion that they ought to sell for under the market?

A. No, sir.

Q. How do you reconcile your position?

A. Well, I consider western pork far superior to soft
853 pork, Georgia pork. Therefore I don't think that the soft pork should bring the price that the western pork would bring.

Q. Now, as a matter of fact, ought not the Georgia pork and Florida pork bring all you can get for it in the market?

A. Why, yes, I agree with you there.

Q. You concede that?

A. Yes, sir.

Q. And you will concede that it is fair to producers of live stock to pay as much for soft stuff as the market will bring? At the same time to make a fair profit?

A. Yes, sir.

Q. Now, you have told ot you have testified that you had a conversation with Mr. Brooks who was the manager of Moultrie Packing Company the first part of September 1917—are you sure of that?

A. I am.

Q. You are positive about that?

A. Yes, sir.

Q. You say that you saw Mr. Brooks at the Moultrie Plant?

A. Yes, sir.

Q. Do you know Mr. Brooks when you see him?

A. I do.

854 Q. Are you well acquainted with him?

A. I am.

Q. You are satisfied that you saw and talked with him at that time?

A. Yes, sir.

Q. Now, what is the biggest week that you ever had when you represented Moultrie Packing Company, what was the largest number of cars that you ever had at one week?

A. About two.

Q. Two cars?

A. Yes, sir.

Q. That was the high point in the—

A. Well, let me se,—I guess it was about three, including some lard that I sold.

Q. About three cars in one week?

A. Yes, sir.

Q. Was that the product that you sold in one week?

A. Yes, sir.

Q. Was there anything special in that transaction?

A. What is that?

Q. I say, was there anything special about that transaction—did you get a carload of lard?

A. Well, yes, I did.

855 There was one load of lard.

Q. There was one carload of lard in that?

A. Yes, sir.

Q. That was some special sale you made along them?

A. Yes, sir.

Q. To whom did you sell a carload of lard?

A. To Baker Brothers—Jeffries' Market and several others I don't remember now.

Q. In your ordinary business—your ordinary business, leaving out this occasion in which you sold an extraordinary number of cars in one week—what was the largest number of cars that you have sold in one week?

A. Well, I should say three.

Q. How many weeks did you sell three cars?

A. Two or three times previous to this.

Q. In other words, three times altogether?

A. Yes, sir.

Q. Now, was there something special in connection with the other case?

A. Just lard.

Q. In each of the occasions when you got in three carloads there was a carload of lard sold?

A. Yes, sir.

856 Q. And in the period of time that you represented the Moultrie Packing Company you on three weeks got in thre carloads of stuff?

A. Yes, sir.
Q. With the exception of those three weeks you have had—
A. As I said those three weeks are the heaviest.
Q. I say, except for this—leave out those three weeks in which you have carloads of lard—how many cars did you get in?
A. Two.
Q. Two cars per week?
A. Yes, sir.
Q. Now, how many weeks did you get in two cars per week?
A. Well, I can't tell you as to that—I can tell you as to the months much easier than I can the weeks.
Q. Well, how would it run by the month?
A. About 8 cars to the month.
Q. About 8 cars to the month?
A. Yes, sir.
Q. How many months was it in which you got in 8 cars?
A. Between 5 and 7.
Q. That is the entire two years that you represented them?
857 A. Oh, no, just one year.
Q. Just one year that you got in 8 cars per month—for how many months?
A. Do you mean two years or one year?
Q. Which do you mean, that is what I am trying to get at?
A. Well, I will say 14 months—two years.
Q. A total of 24 months?
A. Yes, sir.
Q. There were 14 months in which you got in 8 cars per month?
A. Yes, sir.
Q. And that is the most business that you ever did for this company?
A. Yes, sir.
Q. What were the weights of those cars?
A. Well, they vary.
Q. What would they average?
A. Around 30,000.
Q. Around 30,000 pounds per car?
A. 25-20, 30.
Q. I don't mean the capacity of the car, but I mean
858 the actual number of pounds of meat?
A. Yes, sir, as to the meat, that is what I mean.

Q. I understand that the Moultrie Packing Company had a consignment account with you?

A. No, sir, they didn't have.

Q. They had a record of shipments, didn't they?

A. Shipments, not made to me, but parties they sent to.

Q. But they had, you understand, the records of what they sent to you—what they sold?

A. Oh, sometimes I order things in there—

Q. No, I mean they have a record of the shipments made to you and they have the weight and the number and the date and number of cars?

A. I didn't have any such record. The only thing, as I say, I might have ordered 500 hams or I might have ordered bacon or I might have ordered loins—

Q. I said, the Moultrie Packing Company had this record?

A. Oh, they had it.

Q. Do you want to change your answer?

859 A. What should I want to change it for?

Q. Don't you think you have overestimated it?

A. Overestimated what?

Q. The weight of the cars?

A. No, I have not.

Q. Now, when did you have this talk with Mr. Wallow?

A. July, 1917.

Q. Where did you have that talk?

A. Here.

Q. In Moultrie or in Jacksonville?

A. Here.

Q. Mr. Wallow was down here to see you?

A. Yes, sir.

Q. Did Mr. Wallow tell you that you were selling his products too low?

A. I don't remember.

Q. Was not that the purpose of his visit down here?

A. No, sir. The purpose was to get in some accounts that were outstanding.

Q. Now, you never had a dollar invested in this product did you?

A. Who?

860 Q. You.

A. Yes, I did.

Q. Do you mean that you owned any of his products—that you bought it yourself?

A. Yes, sir, very often I bought some, and shipped it in my name.

Q. Yes, I understand, you are a broker—you got this product on commission?

A. Yes, sir.

Q. That was the way—you bought it direct and sold it on commission?

A. Yes, sir.

Q. You got your commission no matter what price you sold it for?

A. Yes, sir.

Q. Your interest was to get sales and get the commission, was it not?

A. Yes, sir. I also got commission on what I ordered in my own name.

Mr. Horton: That is all.

861 *Direct Examination by Mr. Taylor.*

Q. Mr. Smith, did you find it possible to sell Moultrie products at western prices while Swift was selling it at Moultrie prices?

Mr. Horton: I object to that, there is no evidence of any such thing being done.

Mr. Taylor: I think that it is very clear that it is.

Mr. Horton: The witness testifies that he saw one or two sales—

The Examiner: The objection will be noted.

A. Why, no.

Q. Did you try to sell goods at the new prices given you?

A. I did.

Mr. Horton: I object to that. It is too indefinite, the time the witness stated.

The Examiner: The objection will be noted.

Q. What did you do?

A. Why I tried to get the price—I could not.

Q. What was the result of your effort?

862 A. I just gave the account up. I notified them over the telephone—

Q. You say you tried to sell, what was the result of your efforts?

A. I could not sell but very little.

Q. Now, you referred in your cross examination to west-

ern people—I would to ask you if by that exception you meant to include Swift & Company?

A. Oh, yes, sure. Swift & Company and Morris and Cudahy, Armour—

Mr. Horton: They are all in business here are they not?

A. Yes, sir.

Mr. Horton: Lots of competition?

A. Very keen.

Mr. Taylor: That is all.

Recross Examination by Mr. Horton.

Q. When did you get these prices, Mr. Smith, from Moultrie Packing Company? That you spoke about? This big raise?

A. About June or July, 1917.

863 Mr. Taylor: Do you know whether it was while Mr. Wallow was at Moultrie that you got the increased prices?

A. Yes, sir.

Mr. Taylor: Was Mr. Wallow there at the time?

A. He was the manager—yes, sir.

Q. He was manager of Moultrie Packing Company in July, 1917?

A. Yes, sir.

Q. I thought Mr. Brooks was manager?

A. Well, Mr. Wallow was—Mr. Brooks was manager in a way and then he was not. Mr. Wallow—

Mr. Taylor: Explain just what you mean? When did Mr. Wallow come in and just what was his relation?

A. All I know about it Mr. Wallow was sent here he told me with his own mouth that he was sent here from Chicago to take charge of Moultrie Packing Company for the time being. Brooks told me that he was going to stay there a month with them.

Q. It is not a fact Mr. Wallow was a book keeper, an accounting man?

A. That may be.

Mr. Taylor: Did he tell you who sent him from 864 Chicago?

A. Swift.

Mr. Taylor: Swift & Company or Swift?

A. Swift & Company.

Mr. Horton: I move to strike this out on the grounds that it is hearsay.

A. He might have been an auditor or a book keeper but I understood him to say that he was the manager over there.

The Examiner: The motion to strike will be noted.

The hearing will adjourn until 10:00 o'clock tomorrow morning.

And thereupon at 9:30 o'clock p. m. an adjournment was taken until Tuesday morning at 10:00 o'clock.

865 Tuesday, March 22, 1921.

Federal Building, Jacksonville, Fla.

The Hearing met pursuant to adjournment.

Appearanced: The same as of Monday, March 21, 1921:

The Examiner: The Hearing will come to order:

DAVID A. DUNAWAY, called as a witness, and being first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name?

A. David A. Dunaway.

Q. Where do you live?

A. I live at 1326 Main Street.

Q. Jacksonville, Fla.?

A. Yes, sir.

866 Q. In what business are you engaged?

A. I am in the butcher business.

Q. Selling at wholesale or retail?

A. I am selling at retail.

Q. How long have you been engaged in the butcher business?

A. In that one place—I have been there five years, and four months.

Q. When did you start business here?

A. December, 1914, and in the first of it.

Q. And in the course of your retail butcher business what kind of meat do you handle?

A. All kinds, pork beef, sheep, chickens.
Q. Various cuts of pork?
A. Yes, sir. All cuts.
Q. Fresh, soft, and smoked?
A. Yes, sir, I handled all of them.
Q. Do you know Sam Smith?
A. I do.
Q. How long have you known him?
A. Well, sir, I can't tell you that but it must be about 12 years, between 10 and 12 years.
867 Q. Have you done business with him since that time, December, 1914, when you opened your present business?
A. Yes sir.
Q. In what way have you done business with him?
A. He sold me meat of all kinds, pork, fresh hams, butter.
Q. In what way did you regard his—in what kind of business was he engaged in?
A. Well, he was a broker I suppose you would call him, he represented an account in some other place and shipped here and I paid him.
Q. Now, when you first started in from him, whose account did he represent? Do you know?
A. If I remember aright it was Kurdle of Baltimore. He had another account to, but I forget what it was. It was a cake account. He used to sell lots of that stuff.
Q. Do you know whether or not in time he represented Moultrie Packing Company?
A. Yes, he did.
Q. When did he represent Moultrie Packing Company?
A. Well, the date, I don't remember that.
868 Q. Was it a long time or a short time after you commenced to deal with him?
A. I began dealing with him just as soon as he got into town.
Q. But you began dealing with him as a broker before he got the Moultrie account, didn't you?
A. Yes, I was dealing with him all the while.
Q. Can you recall how soon it was that he got the Moultrie account after you commenced dealing with him as a broker?
A. No, I don't remember exactly.
Q. Can you remember whether it was two months, six months—as soon as he got it?

A. Yes, sir. I was one of the first ones that gave him an order when he came out to take orders for that company. I gave him an order.

Q. How did you know that?

A. Well, I know that—I know that he regarded me as one of his best customers, I know he always called upon me.

Q. You were one of his first customers?

A. Yes, sir. I was one of Uncle Sam's first customers.

Q. Did he talk with you about getting the account be-
869 fore he got it?

A. Yes, sir.

Q. Do you recall when it was that you had this conversation with him?

A. No, sir.

Q. What was it that was said?

A. Nothing more than that he was going to have a good account, he was going to change from the ones that he had and that I could get all the stuff, get more stuff than I was getting.

Q. Did he tell you what it was?

A. Yes, sir. Fresh hams and any and all kinds of pork cuts.

Q. Now did he come in later and say that he had this account?

A. Yes, sir.

Q. Did he say what account it was?

A. Well, naturally I knew.

Q. Did he say what Company it was that he was with?

A. Well, now I don't know that I remember that.

Q. Now you say that you knew what company it was—what company was it?

870 A. The Moultrie Packing Company. And before that I think he had the Tifton Company. But I think he had some trouble about the stuff or they didn't do to suit him about the orders, he was working on commission, and they cut him short.

Q. Well, when he came to representing the Moultrie Packing Company, did you buy from him?

A. Yes, sir. I did.

Q. What did you buy?

A. Pork, pork hams, pork loins, shoulders, chitlings, pig feet, spare ribs, back-bone, pig tail, sausages of different kinds.

Q. And that is all fresh pork?

A. Yes, sir.
Q. And did you buy smoked pork?
A. Yes, sir. Smoked pork, hams and shoulders from him.
Q. Did you buy any whole beeves?
A. I bought whole beeves, things like that.
Q. Did you buy any smoked beef?
A. No.
Q. And this beef was Moultrie Packing Company beef?
A. Yes, sir. That is where it came from. I bought it of him from Moultrie—didn't buy much but I bought some.
871 Q. During that time you were buying Moultrie products, through Sam Smith, were the salesmen of Swift & Company calling upon you?
A. Yes, sir.
Q. And what character of goods, what kind of goods were they offering to sell you.
A. They were offering me western meat.
Q. What kind.
A. Pork all kinds of salt goods, bacon, ham, butter and eggs.
Q. The same stuff you were buying from Moultrie Packing Company?
A. The same cuts I was buying from them, Moultrie Packing Company. But they were western things.
Q. Now, do you remember when a time came that Sam Smith stopped soliciting your trade.
A. I remember he stopped—yes, sir.
Q. When was that?
A. I couldn't tell you—I don't remember.
Q. Did you have any talk with Sam about that time in regards to stopping?
A. He told me that he would have to quit on account
872 of the prices the way they had advanced.
Mr. Horton: I move to strike the conversation between the witness and Mr. Smith on the grounds that it is hearsay.
The Examiner: The motion to strike will be noted.
Q. What sort of prices had you been paying for this Moultrie product compared with the prices of western meat?
Mr. Horton: I object to that as being to indefinite. There is no time fixed for the sale nor is the kind of product specified.
The Examiner: The objection will be noted.
Q. Take for instance the fresh product, loins, and along

during the same time, the entire time that Sam Smith was selling them to you, up to, say the end of June, 1917, from the time that he commenced, can you recall about how prices run with reference to western products of the same kind?

Mr. Horton: I object to that as being too indefinite.

The Examiner: The motion will be noted.

A. No, sir, I don't remember, I couldn't tell you, the exact difference in price, but it was about always from
873 2 to 5 cents difference in the western products and the Florida products, it is according to the time in the season, when the season opens up for Florida products—everybody wants to kill, and when the market gets flooded that way, it brings the market price down and then when they quit the market goes back up. But as I say there is always from 2 to 5 cents difference in western and Florida products or Georgia pork.

Q. Well, does that answer include loins and hams and shoulders that we are speaking of—any kind of pork?

A. The Florida pork that you were speaking of, that is cheaper.

Q. In all cuts?

A. All run about the same, not much difference in them and the western cuts.

Q. Now, can you recall whether or not there came a time when Sam Smith called upon you and demanded prices—that is demanded a higher price relative to western pork for the same cuts?

A. Well, yes—his price was advanced on the Moultrie pork on all the cuts.

Q. Can you remember when that was?

A. No, sir.

874 Q. Can you remember when it was with relation to the time when you stopped buying from him?

A. Well, sir, it was along about the time that I stopped buying.

Q. Did you buy from him after these advanced prices?

A. If I did, it was a very little. I don't remember exactly. I think I switched my trade then to another man that had Chipley, his prices were better than Sam's.

Q. Did you have any conversation with Sam about the prices at that time?

A. Sam told me that he had to give up the account on account of the prices.

Mr. Horton: I move to strike out the testimony on the grounds that it is hearsay, not the best evidence.

The Examiner: The motion will be noted.

Mr. Taylor: I think it is the very best of evidence as to what was going on at that time—it is part of the res gestae.

Q. Now, do you remember whether he did give up the account shortly after this?

Mr. Horton: I object on the grounds that it is not the best of evidence. Smith has testified about that himself.

875 Mr. Taylor: I will change the form of the question.

Q. Do you remember whether or not Sam Smith stopped offering the Moultrie pork for sale shortly after you had this conversation with him?

A. I don't remember.

Q. Do you remember whether or not—do you remember when he did stop offering to sell it?

A. No, sir, not exactly.

Q. Do you remember that he did stop offering to sell it to you?

A. Yes, sir. I do remember that.

Q. In that conversation with Sam Smith did he say why he was required to ask a larger price?

Mr. Horton: Now, I object to that. I object to any conversation between the witness and Sam Smith. Mr. Smith has testified fully and any conversation which may have been had by Sam Smith and the witness would not be binding upon the respondent. I object on the further grounds it is hearsay.

The Examiner: The objection will be noted.

A. The only thing that I remember exactly what he said was that he just could not work with Swift & Company and the reason why was that they wanted so much for their

876 goods that he could not sell them on account of the advanced prices—though he could not sell the goods—it was over the price—competition was over their price at the time—higher than his competitor.

Mr. Horton: I move to strike the entire answer on the grounds that it is hearsay.

The Examiner: The motion to strike will be noted.

Q. Do you mean the prices were higher than on the soft pork?

A. No, sir, on the fresh pork.

Q. How did his prices compare with the western products of the same cuts?

A. I don't remember just now, but there was always a difference.

Q. No, I mean the new prices Sam Smith said had been given him?

Mr. Horton: I object to the conversation between the witness and Sam Smith.

Mr. Taylor: This has nothing to do with the conversation, I am asking for the market prices.

Mr. Horton: The market price can speak for itself. You asked for something someone said he could not get. I object on the grounds it is hearsay.

877 Mr. Taylor: I suggest that the question be read for the benefit of Counsel.

Mr. Horton: For the benefit of Counsel for the Commission, the counsel for the respondent knows what the question was.

And thereupon the Reporter read the last question.

The Examiner: The objection will be noted.

Q. Now did it compare with the western pork—the same cuts—that is the question.

A. Of course sometimes, as I have said—

Q. Never mind—how did it compare with the prices for the same kind and same cuts of western pork, that is the question.

Mr. Horton: Mr. Examiner, I suggest that the witness be allowed to finish his answer. Counsel for Commission has no right to make him his own witness, nor to stop him until he has finished his answer.

Mr. Taylor: Alright, if you want to have the witness finish his answer I will ask him to do so.

A. Well, I was going to say that I don't know whether it was because Swift & Company bought the Moultrie Packing Company or not, that caused the advance in pork cuts.

Mr. Horton: Or whether it was advanced in the market?

878 A. I don't know whether it was but as I stated at the beginning it was always less than the western pork, 2 to 5 cents cheaper than the western cuts but I don't remember whether it was on account of Swift & Company buying this man out that the advance in the market occurred.

Q. What I am trying to get out is was this advance in Moultrie pork accompanied by a corresponding advance in western pork or was it that the Moultrie pork only was advanced?

A. I don't remember.

Q. About what proportion of the pork that was handled during this period of time was Moultrie pork and what proportion was western pork—I mean the pork that you handled?

Mr. Horton: I object to that for the reason that it is asking for the opinion of the witness of what occurred 4 or 5 years ago when the facts are too remote for him to guess at.

The Examiner: The objection will be noted.

A. Well, that is a hard question to answer, but I always handled both kinds on account of some of my customers wanting western pork and if they wanted it I gave it to them. If they wanted Georgia pork I gave that to them, but I sold more Georgia pork than I did western pork, I didn't
879 carry western loins.

Q. How about smoked meat?

A. I had quite a lot of smoked meat, Georgia smoked meat was not as good as the standard western smoked meat.

Q. You also carried the western smoked meat?

A. I always cut a western standard ham.

Q. You mean the western hams that you sold you sold as cuts?

A. No, I don't say all of them. I sold some whole, but in addition to that I sold quite a few of cuts. There is another thing about the Georgia pork, you can get small hams. You can't get small western hams.

Q. How about the smoked shoulders?

A. Some of them, I have got them.

Q. Both fresh and western?

A. I handled only western shoulders when I can get the Georgia shoulders, because they are all salty and eat alike.

Q. How about bacon?

A. Smoked bacon?

Q. Yes.

A. I used a little of that, not so very much—not so overly much smoked bacon.

880 Q. Did you also carry western bacon?

A. Yes, sir.

Q. Which do you handle most of?

A. Western.

Q. Fresh?

A. No, western. That I liked myself, the western—

Q. And this was during the period when Sam Smith was selling you western products?

A. Yes, the whole entire period.
Q. Now, are you carrying Moultrie products at the present time?
A. No, sir.
Q. Have you carried them to any extent since Sam Smith stopped selling them?
A. No, sir.

Cross-Examination by Mr. Horton.

Q. Mr. Dunaway, when you testified about Swift & Company buying Moultrie Packing Company out you made that answer upon rumors that you had heard?
A. Yes, sir.
Q. And you didn't know whether it was bought or not?
881 A. No, sir. It was all just what I heard about it—
Mr. Horton: Mr. Examiner, I now move to strike out the answer of this witness with regards to the buying of the Moultrie plant by Swift & Company.
The Examiner: The motion will be granted.
Q. Now, by soft pork, Georgia pork do you mean the character of pork raised throughout the south?
A. Yes, sir.
Q. Raised in Florida and in Georgia?
A. Yes, sir. You will find a little at every place they handle it.
Q. Throughout the South?
A. Yes, sir.
Q. As I understand it that pork is soft?
A. Yes, sir. As a rule it is—not always, but as a rule. The biggest part of it is.
Q. Well, the northern and western pork is firm?
A. Yes, sir.
Q. And the western pork can be handled to better advantage?
A. Yes, sir. I suppose so.
Q. It keeps better?
882 A. Yes, sir.
Q. There is not so very much waste?
A. Yes, sir.
Q. There is not so much loss in handling?
A. Yes, sir.
Q. Now, is that soft pork available to you in this market?

A. I think there is some shipped in here now, but I don't handle it.

Q. You don't handle it because you don't care to handle it?

A. Swift & Company spoke to me about it last week—said, "We have got Moultrie pork and western pork."

Q. Swift & Company told you that last week—that they had western and Moultrie pork?

A. Yes, sir.

Q. And you know that has been true since 1917?

A. Well, something like that. I couldn't say positively about that,—about that date.

Q. Now, Armour & Company have a packing plant in the outskirts of the town, have they not?

A. Yes, sir.

883 Q. And they kill southern pork there, do they not?

A. Yes, sir.

Q. And it can be bought there, can it?

A. Buy it here—not there.

Q. You get it from their branch house, right down here on Bay Street, don't you?

A. Yes, sir.

Q. And then the Jacksonville Cattle Company, they slaughter hogs there, don't they?

A. Yes, they sell the whole hog, I don't think they cut any.

Q. They sell the whole hogs, but you can buy the whole hog from them?

A. Yes, I buy from them.

Q. You do buy from them?

A. Yes, sir.

Q. As a matter of fact, don't they have quite a sale?

A. Ever since I have been in business.

Q. They have had ever since you have been in business?

A. Yes, sir. I buy from them but not exclusively, I buy from every body that sells.

Q. Who did you buy from?

884 A. Swift & Company, Armour, Jacksonville Cattle Company, Jones & Chambliss, Morris & Company—I haven't bought any from Cudahay because they don't handle it—maybe they do, but I didn't buy from them.

Q. Do you buy from Wilson & Company?

A. No fresh pork.

Q. You did buy smoked meat from them?

A. No, I bought a little fresh beef from them, just occasionally.

Q. All those firms have houses in Jacksonville?

A. Yes, sir.

Q. In wholesale meat business?

A. Yes, sir.

Q. They are in the wholesale meat business, soliciting the trade for the various products?

A. Yes, sir.

Q. And that is true and has been true since 1916 and prior thereto?

A. Yes, except Jones & Chambliss.

Q. And I understand it is true of them after the time they started up business?

A. Yes, sir.

885 Q. Now, did you buy very much beef from Mr. Smith?

A. No, sir.

Q. What kind did you get from Smith?

A. I got some good and some sorry, that is why I quit.

Q. What do you mean by sorry?

A. Poor—not fat.

Q. It was thin?

A. Yes, sir.

Q. About the color—

A. Well, you know what a poor cow is if you ever saw one, well it ain't fit to eat.

Q. Not fit to eat?

A. No, sir. And I would hate to buy cattle from them and it come in poor,—bad. And they had that. They sent me some good and then sent me some bad and I quit, because I could get good elsewhere.

Q. You manufactured some sausage?

A. I manufactured nothing but sausage meat, it is cheaper for me to buy.

Q. Sausage meat?

A. Yes, sir. I made a little sausage meat.

886 *Redirect Examination by Mr. Taylor.*

Q. You testified that you didn't handle any Moultrie pork at the present time?

A. No, sir, I don't.

Q. How long has it been since you handled Moultrie pork?

A. I don't remember.

Q. Do you remember handling any of any consequence since Sam Smith stopped selling?

A. Yes, sir, very little.

Q. Does the price have any thing to do with your stopping selling it?

A. Yes, sir.

Q. Will you state what it has to do with it?

A. Well, if I can't get the Georgia pork so that I can offer to sell it for 5 cents less than the western pork, I won't handle it.

Q. Well, what is the present situation?

A. Well, I don't know, I haven't bought any. I haven't tried to buy any.

Q. When did you stop trying?

887 A. I don't remember. It has been some time.

Q. Now, you testified that there was a rumor that Swift & Company had bought out Moultrie Packing Company, which statement was stricken out. For the purpose of locating the time when the increase of price for Moultrie products was demanded by Sam Smith, I will ask you this question: Was the increase of price so demanded before or after that rumor prevailed?

A. I don't remember.

Q. What about the time—do you remember whether the two occurred about the same time?

A. No, sir, I could not say positively.

Q. May it have been some time before?

A. Only from what Smith told me before.

Q. But at the time he told you the increase in price—will you state again what he said?

Mr. Horton: I object, your Honor, if you please, that question has been gone over and was objected to at the time as being hearsay exidence and I still object.

Mr. Taylor: I am not offering it for the purpose of showing that Swift & Company did buy the Moultrie Packing

888 Company, but simply to fix the time when the increase in prices took place, whether it was at the time these rumors were going about. I am not trying to prove the correctness of these rumors. It is not necessary for me to do that, the fact that they prevailed, that is an evidenciary fact, proper to go into this record, but it is very important to fix the time of the increase in prices.

The Examiner: The objection will be noted.

Q. Will you state just what he said?

Mr. Horton: I renew my objection.

The Examiner: The objection will be noted.

A. Well, I don't remember exactly what he said, no more than that he told me that he could not work for Swift & Company because they were shooting his prices up above his competitors—which as I said before I don't know whether it was the condition of the market or whether the other men were reducing to get business.

Q. Do you know why he mentioned Swift & Company?

A. Because he losing out, had not got the business that he had been getting, that was his statement to me.

889 Q. Now was this at the time of the prevailing of the rumors that Swift & Company had bought that branch out?

Mr. Horton: Is it understood that my objection continues?

The Examiner: Yes.

A. It was about that time—I could not say exactly, but about the time the rumors prevailed about that transaction.

Q. Do you recall whether or not Smith ever mentioned Swift & Company's name to you before the time that this rumor was prevailing?

Mr. Horton: I objected to that on the grounds that it is immaterial and incompetent.

The Examiner: The objection will be noted.

A. No, sir.

Q. Do you mean that you do not recall or that you did not?

A. I don't recall, I don't remember.

Q. Do you remember whether the name of Swift & Company was mentioned, whether it ever come up in the conversation before you heard of this? That Swift had bought Moultrie plant?

A. No, sir.

890 Q. Could you handle to advantage the Moultrie pork if you could buy them now at the same differential that you bought from Mr. Smith?

A. No, sir.

Mr. Horton: I object to that. The witness has testified that he didn't want to buy unless he could buy 5 cents a pound cheaper.

A. No, sir—not now. It is too hot.

Q. Suppose you could buy at the same price you could buy from Smith—

A. No, sir, it is too hot, we don't buy in the summer time

like we do in the winter, we don't buy from Smith in the summer time, we bought only in the cold months.

Q. Take the seasons that you bought from Smith, I will ask you if you could get it at the same price you got from Smith and in the proper season could you handle Moultrie pork to advantage if you could buy it as you did buy from Sam Smith?

Mr. Horton: I object. He is asking the witness to speculate, and it would be dependent upon the market conditions, the conditions of the trade and other things.

Q. That is what I am trying to find out.

The Examiner: The objection will be noted.

891 A. If I could buy the pork in the winter time at the price that I bought from Sam Smith, sure, I would be glad to, handle it, but the market is higher now than when I bought from him—higher than when I bought Moultrie products from Sam Smith.

Q. Please explain what you mean.

A. Bring more money.

Q. What?

A. Pork hams, pork shoulders, loins.

Q. Are you talking about western pork or southern pork?

A. I am talking about southern pork.

Q. There is not the same differential at the present time as there was when Sam Smith was offering you the Moultrie products?

A. No, sir. Just as much.

Mr. Taylor: (To the Reporter.) Read the last question.

Thereupon the last question was accordingly read.

A. I didn't say that there was not the same prices, I don't know—I don't know what they asked for Moultrie pork at the present time. I know the price of western pork is high enough and going higher, but what Moultrie pork is, I don't know.

892 Q. You testified that you bought Moultrie pork at 5 cents less than you bought western pork?

A. Yes, sir.

Q. Now, if you could buy Moultrie pork at 5 cents less than you could buy western pork could you handle it today?

A. No, sir.

Q. Taking the season of the year, the proper season, could you handle it?

A. Oh, yes, sir, in the proper season, that would be alright. Take it in the winter time I would be glad to handle it.

Q. In the winter time you would be glad to handle it?
A. Yes, sir. But not in the summer. I don't want to handle it in the summer.
Q. You dont handle it in the summer months? You did not when you bought from Smith?
A. No, sir.
Q. Taking the seasons of the year that you handled it at the time you bought from Sam Smith, you could handle it in the same way now?
A. Yes, sir.
893 Mr. Horton: If the Examiner please, I move to strike out the last answer of the witness on the grounds that it is speculative and assumes conditions without taking into consideration other factors.
The Examiner: The motion to strike will be noted.

Cross-Examination by Mr. Horton.

Q. These conversations between you and Mr. Smith—you do not pretend to state what Mr. Smith said was true? Or not?
A. No, sir. I don't say.
Q. You don't know whether it was true or not?
A. No, sir.
Q. Mr. Horton: That is all.

Redirect Examination by Mr. Taylor.

Q. You know that it is true anyhow that he demanded more money for the Moultrie products at the time he told you he had to do so?
A. He said so—yes, sir.
Q. You know that it is stated that he did ask more for it, don't you—you know that he asked you higher prices?
894 A. Yes, sir. I don't know whether it was exactly at that time or just before he quite he was asking more money.

Recross Examination by Mr. Horton.

Q. You don't know that he asked more than the market price?
A. No, sir.

Q. You don't know whether it was a rise in the market or not?

A. No, sir.

Mr. Taylor: Q. You know that he told you that he would be obliged to ask for more, and that he did ask for more?

A. Yes, sir.

Mr. Taylor: That is all.

And thereupon the witness was excused.

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895 WILLIAM D. CORDRAY called as a witness for the Commission at Jacksonville, Fla., on March 22, 1921, after having been duly sworn, testified in substance as follows (1492-1533):

That he has been engaged in the retail meat business in Jacksonville, Fla., since 1916; that he purchased Moultrie Packing Company products from Sam Smith as long as Sam Smith represented that concern but he could not remember the exact dates; that the products he purchased from Sam Smith packed by the Moultrie Packing Company included fresh meat, pork, etc., and cured hams; that during the time he was buying Moultrie products from Sam Smith a salesman from Swift & Co. offered to sell him a full line of products including pork, hams, etc., as well as smoked meats; that he handled both western and Moultrie products at the same time; that he was unable to find any record of purchases from the Moultrie Packing Company but he estimated his purchases from Moultrie amounted to from $15.00 to $300.00 per week during the winter season, December, January, March and April; that some time in 1917 Sam Smith told him that he was not handling the Moultrie account; that he did not buy any Tifton products from Sam Smith; that he buys Georgia pork from Swift & Co. and from Armour & Co. at the present time, but that in his business now he handles only western products because they stand up better; that
896 he is catering to a different class of trade now than he was at the time he was handling Moultrie products. The prices varied according to the market.

Cross-Examination by Mr. Horton.

Q. You don't handle the Southern or native pork now in your place of business, you say?

A. Only very occasionally, once in a while, as the class of trade I have now does not call for that class of pork.

Q. What is the class of trade that you are catering to now?

A. The higher class, select trade.

Q. Explain more fully what you mean by that.

A. People who come in and want to buy cuts of meat—choice cuts, high grade meat.

Q. And who are willing to pay more for their meat?

A. Yes, sir, willing to pay more for their meat, than for stuff not as firm as—a different kind—a better quality, and they are willing to pay for the better quality.

Q. They are willing to pay for a better quality?

A. Yes, sir.

Q. And choicer cuts?

A. Yes, sir.

Q. And better texture of meat?

A. Yes, sir.

Q. And a better color?

A. Yes, sir.

Q. And is better looking and tastes better?

A. Better looking, tastes better, and also—

897 Mr. Taylor: Mr. Examiner, I object to these questions on the grounds that they are indefinite, uncertain and do not relate to the direct examination. This question shows that counsel is talking about a very different product. I move to strike out the answer.

The Examiner: The motion to strike will be noted.

Q. What kind of meat did you have in mind when you made these answers?

A. Both beef and pork.

Q. But particularly pork?

A. Not particularly anything—

Q. You had the different pork cuts, pork loins, pork hams, shoulders, smoked meat?

A. Do I handle them?

Q. Did you have that in mind?

A. No, sir, not in particular. I was speaking of western meat—not particularly of that, just in general.

Q. Would the same line of reasoning apply to the various pork cuts, such as hams, shoulders?

A. Practically—loins, hams, shoulders,—
Q. And smoked meat also?
A. And smoked meat also.
Q. In fact all the various pork cuts?
A. Yes, sir.
Q. All of them?
A. Yes, sir.
Q. And what class of trade were you catering to before you moved to your present location, which was the same time that you were buying meat from Mr. Smith?
898 A. Why, it was a class of trade that was looking for cheaper cuts and cheaper prices—the public in general.
Q. And did you advertise your wares at that time?
A. Yes, sir.
Q. And did you offer special products then?
A. Yes, sir.
Q. And cut rates?
A. Yes, sir.
Q. And did you advertise at prices that showed that you were selling at prices cheaper than the market?
A. Yes, sir. I had the best prices on pork and fresh pork.—
Q. And you offered—
A. —To endeavor to sell the products.
Q. You endeavored to fulfill your offers?
A. Yes, sir, as I advertised.
Q. Now, did you buy any of the native products or Georgia product from anybody except Sam Smith?
A. Yes, sir.
Q. From whom?
A. From different ones that offered to sell to me some native stuff in Florida, in Jacksonville, and from farmers.
Q. Could you please mention some of the names of the people from whom you bought?
A. I have no recollection of their names.
Q. You have no recollection of their names?
A. No, sir, not the farmers. The farmers offered it to sell, and I bought it.
899 The farmers come in often. They will have two or three hogs they have killed themselves, and he would buy from them. The Jacksonville Cattle Company were selling native whole pigs, slaughtered and dressed, but he doesn't believe he bought but little from them. He also bought the native or soft pork from the Macon Packing Com-

pany and from the Tifton Packing Company. He has now been buying from Swift & Company, Armour & Company, Cudahy Packing Company, Morris & Company, Kingan & Company, Martin & Company of Baltimore, The Independent Packing Company of St. Louis and Bergin & Company from Chicago, also Wilson & Company. Those firms all sell at this market and have representatives here selling mostly western products.

Redirect Examination.

Q. Did you ever eat any of the soft pork yourself?

A. Yes, sir. At different times I have.

Q. Was it good fresh meat?

A. Yes, sir.

Q. How does the flavor of the soft pork or peanut fed pork compare with the flavor of the western pork?

A. Well, the flavor is—it is according to the way it is cooked. Some of it has a fresher taste, a green taste.

Q. Don't you have certain customers who prefer the flavor of the peanut fed pork rather than the flavor of the western pork?

A. Yes, we have some customers who would ask for the Florida or native pork.

900 Q. And is that the same as the soft or peanut fed pork?

A. Practically the same thing. Some of it is fed on swill and some on peanuts.

Q. How is this pork account generally known, as Florida pork, Moultrie pork or what? By the people generally?

A. Known as Georgia pork.

Q. Now, do you have certain customers who prefer that Georgia pork to other pork?

A. Well, some customers, yes. Some customers will ask for pork hams, pork shoulders, for Georgia pork hams and Georgia pork shoulders.

Q. Do any of your customers now at your present place of business, 336 Main Street, ask for Georgia pork cuts?

A. No, sir. Very seldom. It is very seldom that we have customers ask for Georgia pork cuts? Sometimes they ask, "Is this Georgia meat?" What cuts I have handled last year have been altogether western pork loins and I have handled a few native pigs.

Q. Now, while you handled this native soft pork at your

place of business did you have people call for it or ask if it was Georgia pork?

A. Occasionally, yes, sir.

Q. Now, please see if you can state a little more definitely the time when you were buying the Tifton pork from Mr. Smith and also the Macon pork from Mr. Smith?

A. Well, I have the dates mixed. I never paid very much attention to it whether it was before or after I had been buying—I had been buying from Mr. Smith for some time.

Q. You are very certain that you did buy them from him?

A. I am sure that I bought those goods from him, but I can't recollect definitely the date—exactly the month or the year.

Q. Now, did you hear of any complaint from your customers about those goods?

A. Not any in particular. They might have said it was fat or something like that.

901 Q. The same as you might have had complaint about the meat from any of the other stores?

A. Yes, sir.

Q. Why did you stop buying Tifton pork from Mr. Smith?

A. Well, on account of the later—it seems that he could not deliver the goods on time or he had lost the account. I am not sure which but I never did handle as much stuff from him in the summer as I did in the winter. In the summer, I would not buy sometimes for two or three weeks.

Q. That was in the summer time?

A. Yes, sir, in the summer time. On account principally of the way it holds up. I can't remember how he lost the account or how he happened to quit.

Q. How long a time intervened between your orders in the winter time?

A. In winter time, once a week.

Q. Now take the Macon account, why did you stop buying the Macon products from Sam Smith?

The reason why he quit handling the Southern pork and commenced handling the Western pork is—most of his customers want better meat and he kept it. The Western pork keeps better in the warmer months of the year—keeps longer, doesn't get sticky, and will hold up longer than the Georgia pork will. There is also less waste from shrinking. The Southern pork is very oily. Feeding peanuts to a hog will make it soft.

Redirect Examination.

The difference between the price of Western pork and Southern pork varied—three to four cents, probably five cents situated; it varied according to the way the market was situated. This difference did not apply to Moultrie
902 pork only, but to all Southern pork in general—Florida pork and Georgia pork.

Q. Now, going back to the question of your reason for discontinuing the southern pork, I will ask you if the prices you had to pay for the southern pork didn't have something to do with your stopping handling it?

Mr. Horton: I object. This is not redirect examination.

The Examiner: The objection will be noted.

Mr. Taylor: The answer shows that the question was not understood before, and was not responsive to the question.

I will ask the Reporter to read the question.

And the question was accordingly again read.

A. No, sir, not altogether.

Q. Not altogether?

A. Because I have handled this pork off and on since these salesmen have been calling on me. When I don't have salesmen calling on me why naturally I don't buy the pork. Probably, if they had continued to call upon me I would have continued to buy the pork from them.

Mr. Taylor: That is all.

Re-recross Examination.

All kinds of pork can be bought on this market, and if you want anything and show a disposition to be interested in anything and call for it, the salesmen will be around to offer it to you.

903 Counsel for Commission and for Respondent have together, examined the checks of the stub-book received in evidence as Exhibit No. 133, and for the purpose of eliminating the unnecessary and irrelevant matter from the record. Stipulate:

That the only part of this Exhibit which is relevant to the case are the stubs showing the drawing of the following checks:

No. 1001 August 17, 1917.
Moultrie Packing Company, Globe Market,
1 a/c $7.00

No. 1015, 1/12/17
Moultrie Packing Company, Belton & Co.
in full 10.00
No. 1019 9/13/17
Moultrie Packing Company, A. S. King,
in full 15.60
No. 1023, 9/18/17.
Moultrie Packing Company, W. Bay St.
Mkt. Inv. 913 81.92
No. 1024, 9/18/17
Moultrie Packing Company, Crax. 6,
Mkt. Inv. 9/13/17 38.83
No. 1025 9/18/17
Moultrie Packing Company, United Mkt.
Inv. 9/13/17
No. 1026 9/18/17.
Moultrie Packing Company, Rizk Bros. 1.35
No. 1030 9/19/17
Moultrie Packing Company, J. C. Fitz-
patrick. Inv. 9/13/17 10.08
904 No. 1031 9/19/17.
Moultrie Packing Company, M. A.
Mazourg. Inv. 9/13/17 $13.50
No. 1032 9/20/17
Moultrie Packing Company
C. L. Yates, Inv. 9/13/17 31.99
No. 1036 9/24/17
Moultrie Packing Company,
C. L. Yates, Inv. 9/17/17
In full 10.84
No. 1053 Oct 9/17
Moultrie Packing Company Cracker 6.
Mkt. Inv. 9/17 12.28

It is further stipulated that the above recital may be received in lieu of the Exhibit No. 133, and that the Exhibit may be returned to the witness, Samuel T. Smith.

(Mikle Schemer recalled See abstract after page 1237.)

905 JAMES T. FITZPATRICK called as a witness for the Commission at Jacksonville, Fla., on March 23, 1921, after having been first duly sworn, testified in substance as follows (Pages 1585-1616):

That he has been engaged in the retail grocery and meat business in Jacksonville, Fla., for seven or eight years; that he bought pork cuts, whole pigs, liver, hearts and similar products from the Moultrie Packing Co. in 1916-17, maybe as far back as '15, through Sam Smith, who was their representative, but according to his records the last purchase made from the Moultrie Packing Company through Sam Smith was September 13, 1917; that his earliest record available covers purchases beginning April 21, 1917 down to January 1, 1919, and that this record shows that he made weekly purchases of Moultrie products from Sam Smith between April 17th and July 19, 1917, and that the next purchase thereafter was September 13, 1917; that these weekly purchases ranged from about $13.00 per week to $57.00 per week; that during the month of May he estimated that two-thirds of his purchases were from the Moultrie Packing Company; that he also made purchases during that period from Summerlind & Co., Smith, Richardson & Conroy, Kingan & Co., and the Cudahy Packing Co.; that his purchases of fresh pork products from Moultrie ran heavier during the winter months than during the summer months, and after September 13, 1917 he
906 purchased local fresh pork from Farris & Co. and from Armour & Co., that the local product has always been cheaper than the western product; that Swift & Co.'s salesman during 1916-17 solicited his business.

That he bought fresh Georgia pork or soft and oily pork before the Moultrie Packing Company started selling in this market; that he bought it then from Ferris & Company, Smith, Richardson & Comroy and Summerlin & Company; those firms handled the southern pork. That while he was buying the Georgia pork from the Moultrie Packing Company he also bought Western pork cuts. That he did not buy any more products from the Moultrie Packing Company after September 13, 1917 because he heard that they were out of existence or had no representative in Jacksonville.

Cross-Examination.

That his practice was to call up the various dealers, get the best prices, and then buy; that he ran a small market on the outskirts of town, about one and a half miles from the center of the city;

Q. What kind of trade do you cater to in your market?

A. Practically the colored trade.

Q. That is in the colored section of the City?

A. Right on the line between colored and white section.

Q. How many of your customers are colored people?

A. I have got quite a few.

Q. And the colored trade is not so fastidious about the meat they eat as some of the other people?

A. Yes—they are pretty fastidious—have to carry good meats to sell them.

907 Q. Don't you have to be considerate about the price?

A. They want it as cheap as they can get it—like everybody else.

Q. Now—you also run a general store?

A. Yes, sir.

Q. Is that just simply groceries, or is it drygoods, too?

A. I have got a few drygoods too,—you might call it drygoods,—hosiery, overalls, collars, undershirts, a few drygoods.

That he bought nothing from the Moultrie Packing Company except fresh meats, such things as pigs, fresh sausage, liver, tongues, hearts, hazletts; that he thought he did not buy any beef at all from the Moultrie Packing Company.

That there are a number of concerns here in town that sell meat—a great many more than he has purchased from—but that he did not know how many.

That Summerlin & Company, Ferris & Company and the Jacksonville Cattle Company are local slaughterers.

That he has bought dressed pigs from the farmers who slaughtered and brought them into Jacksonville to sell to the dealers; that that practice has continued for a great many years.

Redirect Examination.

Q. I notice that counsel for respondent asked you what quality of products you sold to the trade—will you state what quality of products you bought from Moultrie Packing Company?

A. Superior to anything you could get in Duval County—anything you have got in Duval County.

908 Q. By that you mean any other local pork?

A. Yes, I consider it so.

Q. How did it compare with the Western product?

A. Why,—I would rather have it in my business.

Q. How did the trade like it?

A. I think they liked it better—under the circumstances, I think they liked it better.

Recross Examination by Mr. Horton.

Q. When you purchased pork from the farmers, where would that appear upon your books?

A. That would usually go in the Sundry Purchases.

Q. And there are on these pages from 2, to 48, a number of accounts which are Sundry Purchase Accounts?

That he did not buy from Swift & Company; that he thought Swift & Company's salesmen had solicited his trade for the years 1916 and 1917.

909 It is stipulated by and between the parties hereto that if William J. Abernathy were called as a witness and sworn, he would testify that from September 30, 1915 to the end of February 1916, he was employed by Jeffries Market, and was in charge of the books of account, and that the ledger account between Jeffries Market and Moultrie Packing Company, under his supervision and control and the debit entries in the ledger, Commission's Exhibit No. 116-a, beginning October 9, 1915, and ending February 28, 1916, are in his handwriting and are correct entries, and that the ledger account between Moultrie Packing Company and Jeffries Market, received in evidence as Commission's Exhibits respectively, 116-a and 116, are true and correct accounts as kept by him.

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910 T. J. VINZANT called as a witness for the Commission at Jacksonville, Fla., on March 23, 1921, after having been first duly sworn testified in substance as follows: (Pages 1626-1652)

That he has been engaged in the retail grocery and meat business in Jacksonville, Fla., for a number of years and was engaged in that business in 1916-17. He identified a check

marked: "Commission's Exhibit A 24" for identification as a check drawn by himself to the Moultrie Packing Company June 5, 1917, to cover an invoice of meat products purchased from Moultrie Packing Company during the previous week; that this was the last payment he had made to the Moultrie Packing Company for meat products; that he had made search for invoices of the Moultrie Packing Company and he could not find any later than the month of June, 1917, which he identified and which were offered in evidence and marked: "Commission's Exhibit 143-144-145" respectively. He also purchased and identified two invoices from Swift & Co. dated October 4, October 5, covering purchases of products from the Moultrie plant of Swift & Co. and so marked on the invoices, which were identified and offered as "Commission's Exhibit 146-147," that the witness' best recollection was that the products represented on these invoices were fresh pork products.

911 T. J. VINZANT:

Cross-Examination.

That in 1917 he was paying a higher price every month; that the market must have been advancing; that dealers other than Swift & Company advanced their prices also; that he also bought from the farmers who sold whole hogs; that he supposed he bought in the years 1916 and 1917 as he buys from the farmers every year; that he supposed he bought from Armour & Company, Swift & Company, Kingan & Company and all of them, also from Wilson & Company and Morris & Company; that these firms were engaged in business here in Jacksonville in 1917 and before and since that time.

912 OTIS T. WEEKS called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your name?
A. Otis T. Weeks.
Q. Do you reside in Jacksonville, Florida?
A. Yes, sir.

Q. Are you engaged in the retain meat busines??
A. Retail grocery and meat business.
Q. You are a member of the firm of Cook & Weeks.
A. Yes, sir.
Q. How long has the firm of Cook & Weeks been doing business in the City of Jacksonville?
A. A little over four years,—since 1916,—August, I believe it was,—four or five years ago.
Q. Have you anything here which you can consult to refresh your recollection of the date?
A. The date when I started?
Q. Yes, as to the date when you commenced to do business in Jacksonville,—the firm of Cook & Weeks?
913 A. Yes sir, I have. (Witness consults book.) August, 1916.
Q. That is, you mean, the firm of Cook & Weeks was formed to deal in retail groceries and meats?
A. Yes, sir. I was just the market man.
Q. What do you mean by that?
A. Just the meat business. Nothing but meats.
Q. And how long did you continue to deal in meats alone?
A Until July 1912.
Q. And prior to August, 1916 had there been a business to which Cook & Weeks succeeded?
A. Why there was—Ballou & Weeks.
Q. The firm of Ballou & Weeks? They were doing business, the same kind of business, retail meat business?
A. Yes, sir.
Q. And you entered into the firm August, 1916?
A. About August, 1916.
Q. And did Mr. Cook remain?
A. Yes, sir.
Q. Now, since you have been connected with this business has the firm bought meat products from the Moultrie Packing Company?
914 A. Yes, I bought from them.
Q. What did you buy from Moultrie Packing Company?
A Well, I bought fresh and smoked meats, was about all I have bought.
Q. What kind of meat?
A. Pork loins, pork shoulders, smoked hams.
Q. Any fresh hams?
A. Yes, sir, fresh hams.

Q. Smoked shoulders?
A. I think I bought a few from them, I would not be sure about that.
Q. Bacon?
A. Bacon—no smoked bacon—not that I know of.
Q. How long did your firm continue to buy from Moultrie Packing Company?
A. Well, about two years, as well as I can judge.
Q. Down to what dates?
A. Down to what dates?
Q. Yes?
A. I have forgot that.
Q. Do you wish to consult some date to refresh your memory?
915 A. September, 1917.
Q. What date in September?
A. September 14, 1917.
Q. Do you make this statement after examining some account to refresh your recollection?
A. Yes, sir.
Q. Now during this time, from August 16 to September 14, 1917 did the salesmen of Swift & Company call upon your firm from time to time to sell you goods?
A. Yes, sir.
Q. And what sort of goods did they call upon you to sell?
A. Well, a general line.
Q. That included pork, did it?
A I guess it did,—always had pork.
Q. Both fresh and smoked?
A. Yes, sir.
Q. All cuts,—all kinds?
A. We don't handle all cuts, but they had all kinds.
Q. Did you buy any beef from the Moultrie Packing Company?
A. I don't know—I have bought a little,—I don't know
916 when that was, I was not very successful in getting it from them—I stopped buying.
Q. Can you tell why you stopped buying from Moultrie Packing Company in September 1917?
A. Well, the salesman quit calling upon me.
Q. Who was the salesman?
A. Sam Smith.
Q. Do you know why he quit calling upon you?
A. No, sir.

Q. Have you ever bought any Moultrie Packing Company goods since you stopped buying from Moultrie Packing Company?

A. I might have bought some of the goods, not knowing it.

Q. Have you made search to discover the invoices for the Moultrie Packing Company for goods bought by you from them?

A. Well,—I didn't myself,—but them Mrs. Cook has. I was getting the stuff out for her, there was some in a box,—I know some of our bills were destroyed; if you want me to look again I will look.

Q. And you found some in this box?

A. Yes, sir.

Q. Did you find any anywhere else?

A. No, sir.

Q. Do you know any other place to look for them?

917 A. No, sir.

Q. You did not find any anywhere else aside from what you discovered in this box?

A. No sir.

Q. Did you look anywhere else?

A. No sir.

Q. Did you find all of the bills?

A. That was all we could find,—that aint all of them but it is all we could find.

Q. Well, Mr. Weeks, what are those papers which I show you?

A. Bills from Moultrie Packing Company.

Q. Bills of Moultrie Packing Company to Cook & Weeks?

A. Yes, sir.

Q. For goods bought by Cook & Weeks of Moultrie Packing Company?

A. Yes, sir.

Q. The goods were bought at the time the invoices of bills were dated?

A. Yes, sir.

Q. The goods were of the character described in the

918 bills, were they?

A. Yes, sir.

Q. And you now have in your hand bill dated "1/3/17" have you?

A. Yes, sir.

Q. Now, there are a number of these bills of the same

general character running through the year 1917 down to last one, dated—what?

A. "7/3/17".

Q. And there are thirty-four of these bills in all, is that correct?

A. There are thirty-four.

Q. Now did these bills represent goods purchased at the times of the dates of the respective bills by Cook & Weeks from the Moultrie Packing Company?

A. Yes, sir.

Mr. Taylor: I offer them all in evidence. There are thirty-four of them.

Mr. Horton: Mr. Examiner we object to the introduction in evidence of these bills on the ground that they are not competent nor material to the issues, nor are they properly
919 identified.

The Examiner: The objection will be noted.

Mr. Taylor: I ask that they be marked, and admitted in evidence.

The Examiner: The invoices will be received in evidence and marked Commision's Exhibits, respectively Nos. 149 to 182, inclusive.

It Is Agreed between counsel for the respective parties hereto that Photostat copies of the said Exhibits Nos. 149 to 182, inclusive, may be made and substituted for the originals and the originals withdrawn and returned to the witness, Weeks.

Q. Now then, Mr. Weeks, I believe you said that you bought other goods from Moultrie Packing Company than these represented by these invoices just received in evidence?

A. Yes, we bought more than that.

Q. All of the goods shown in that invoice were bought by your firm from Moultrie Packing Company and received by your firm from the Moultrie Packing Company on the dates shown on the respective invoices?

A. Yes, sir.

920 Q. And settled for on the basis of prices there shown?

A. Yes, sir?

Q. Are you buying from the Moultrie Packing Company at this time?

A. No, sir.

Q. How long since you have bought the products of the Moultrie Packing Company from any source whatever?

A. Well, this is the last bill I have got.
Q. You mean the one of September 14, 1917?
A. Yes sir. I would not swear that is the last one, but I think it is.
Q. And that one you bought from Sam Smith, Broker, did you not?
A. Yes, sir, I guess I did. Well, I tell you, his wife sold goods, I lots of times bought from her.
Q. Well you were buying from him when you were buying from his wife—it just went through his wife?
A. Well, I don't know.
Q. It was for the benefit of his account?
A. Oh, yes.
Q. These invonces all show you bought from Smith, do they not?
A. Yes, sir.
921 Q. They were his sales?
A. Yes, sir.
Q. Why didn't you keep on buying from Smith?
A. Well, he just quit coming around and I just didn't buy. We have got lots of brokers. The ones that come around got the orders. The last time he was there he was a little too high and I didn't buy anything.
Q. That was some time after this purchase of September, 1917?
A. Yes, sir.
Q. Does your firm keep books, Mr. Weeks?
A. Well, yes.
Q. Who keeps them?
A. Mrs. Cook.
Q. And that is Mrs. Cook who is here present, now?
A. Yes, sir.

Cross-Examination by Mr. Horton.

Q. Do you know whether or not Mr. Sam Smith was in the City of Jacksonville between the first of August and the 6th of September, 1917?
A. I don't know sir.
922 Q. He has testified in this case, and he has testified that he was out of the City at that time? He did not call upon you during those dates, did he?
A. I could not tell you, it is too long ago for me.

Q. Now did you ever try to buy Moultrie pork from Swift & Company?

A. No. I might have handled stuff from them but I never tried to buy any Moultrie stuff from them that I remember of.

Q. You never asked for Moultrie pork?

A. No, sir.

Q. Did you know you could get Moultrie pork here if you wanted it?

A. Yes, I heard you could, and I might have handled it,—I didn't pay no attention to it.

Q. Did the salesmen offer it to you?

A. Well, I don't remember that. That is a long time ago—too long for me to remember about it.

Q. Does he call upon you now?

A. Yes, sir,—not the same man.

Q. Yes, but some Swift Salesman?

A. Yes, sir.

923 Q. Does he offer you Moultrie pork?

A. I don't do much buying on the meat side, now.

Q. Do you know whether or not there was an advancing market in the summer and fall of 1917?

Mr. Taylor: That is objected to, Mr. Examiner.

The Examiner: The objection will be noted.

A. I say I don't know. The market changed too fast for me—I don't remember, that is too much for me to remember.

Q. Was there a rapidly changing market in the fall of 1917?

A. How is that?

Q. I say do you mean by your answer that there was a rapidly changing market in the fall of 1917?

A. No, sir, I don't mean that,—I don't remember whether it was or not.

Q. You don't remember whether it went up or went down?

A. No, I don't remember whether it went up or went down.

Mr. Taylor: Or whether it stood still?

A. (No answer.)

Q. Do you remember how it went from January to July, 1917?

A. What?

924 Q. Do you remember the trend of the market from January to July, 1917?

A. No, sir.

Q. Will you please examine these bills you have introduced here and see if that refreshes your memory?

A. No,—I know I could not answer that question, four or five years ago,—I would not try to answer it unless you give me a little time to go back over the record—that is too deep for me.

Q. I notice on the invoice dated January 3, 1917, which is Commission's Exhibit No. 149, the price of sixty pounds of pork loins is 15½c; and I notice on the invoice of June 19, 1917, Commission's Exhibit No. 181, that it is 23½c for the same size loin. Does that indicate to your mind whether the price went up or down?

A. The market—I can't judge,—I would not attempt to make a statement on the market at that time; you have got your bills there, just as good evidence as I can give you.

Q. If the bills show higher prices for pork loins in June and July than they did in January, would you say that the market price went up?

A. Yes, sir.

Mr. Taylor: That is all very objectionable, Mr. Examiner.

925 The Witness: Have I got to answer all those questions?

Q. Don't you want to answer these questions?

A. Ain't no use for me to answer those questions—I ain't going to make a price, so long ago as that.

Q. Don't you want to answer the question?

A. No, I don't want to answer that question; it ain't no good. I don't want to answer anything—go way back yonder five years ago and up to the present date—I would not attempt it unless you would give me some records to go by.

Q. Mr. Weeks, please let me ask you if the price of pork loins advanced, 15½c in January to 23½c in June, does not that indicate that there was a rise in the market?

Mr. Taylor: That is objected to, that is not proper cross examination. The bills show on the face of them what they are.

The Examiner: The objection will be noted.

A. You have got them right there in front of you—what is the use of me telling you. Swift & Company has got them in that little book back there for the last twenty years.

Q. Yes, I know Swift & Company have the prices, but Mr. Taylor will object if I try to put those books in evidence?

A. Here are these bills, why ain't they as good to you
926 as for me to tell you? I had to produce them—it is up to them to use them.

Mr. Horton: No further cross examination.

And thereupon the witness was excused.

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927 IDA A. COOKE called as a witness for the Commission at Jacksonville, Fla., on March 23, 1921, after having been first duly sworn testified in substance as follows (Pages 1668-1700):

That she has been a bookkeeper for the firm of Cooke & Weeks since August 1, 1916, which books she produced in the form of a journal, and which contained the records of the business of the firm of Cooke & Weeks, beginning in May 1916, and running to the end of the year 1918; that this book contained entries showing amount of purchases made by Cooke & Weeks from the Moultrie Packing Company, but not the character of the goods nor the prices; that she had and could identify "Commission's Exhibit 149-162" inclusive, as being invoices from the Moultrie Packing Company covering meat bought by Cooke & Weeks, and consulting her record, witness stated that the aggregate amount of purchases from the Moultrie Packing Company from January 3, 1917 to July 3, 1917 was $529.26.

IDA A. COOKE:

928 *Cross-Examination.*

Mrs. Cook then read from the same book, a skeleton of the purchases made from other packers. The month beginning January 3, 1917 is as follows:

Jan. 3: Kingan, Swift & Co.
Jan. 5: Morris & Company
Jan. 5: Cudahy & Company.
Jan. 6: Morris & Company
Jan. 6: Cudahy & Company
Jan. 6: Kingan & Company
Jan. 8: Meat, Summerlin & Company.
Jan. 8: Jacksonville Cattle Company

Jan. 8: Swift & Company.
Jan. 8: Cudahy & Company
Jan. 9: Cudahy & Company
Jan. 9: Kingan & Company
Jan. 9: Morris & Company.
Jan. 10: Swift & Company
Jan. 10; meat, Cudahy & Company
Jan. 11: meat, Cudahy
Jan. 11: Swift & Company
Jan. 12: Swift & Company
Jan. 12: Kingan & Company
Jan. 13: Morris & Company
Jan. 13: Kingan & Company
929 Jan. 15: meat, Summerlin & Company,
Jan. 15: Jacksonville Cattle Company
Jan. 15: Kingan & Company
Jan. 15: Morris & Company
Jan. 16: Kingan & Company
Jan. 16: Cudahy & Company
Jan. 16: Swift & Company
Jan. 16: Swift & Company, again
Jan. 17: Morris & Company—breakfast bacon
Jan. 17: Morris & Company
Jan. 17: Kingan & Company
Jan. 17: Swift & Company
Jan. 18: Kingan & Company
Jan. 18: Morris & Company
Jan. 18: Kingan & Company, again.
Jan. 18: Swift & Company
Jan. 19: Swift & Company
Jan. 19: Cudahy & Company
Jan. 19: Moultrie Packing Company
Jan. 20: Morris & Company
Jan. 20: Cudahy & Company
Jan. 20: Kingan & Company
Jan. 22: Jacksonville Cattle Company
Jan. 22: Summerlin Company
Jan. 22: Kingan & Company
Jan. 22: Cudahy & Company
930 Jan. 23: Kingan & Company, three invoices same day.
Jan. 23: Swift & Company
Jan. 23: Cudahy & Company
Jan. 24: Kingan & Company

Jan. 25: Cudahy & Company
Jan. 25: Swift & Company
Jan. 25: Kingan & Company
Jan. 26: Cudahy & Company
Jan. 26: Kingan & Company
Jan. 27: Swift & Company
Jan. 27: Kingan & Company
Jan. 29: Cudahy & Company
Jan. 29: Morris & Company
Jan. 29: Jacksonville Cattle Company
Jan. 29: Swift & Company
Jan. 30: Swift & Company
Jan. 30: Morris & Company
Jan. 31: Summerlin & Company
Jan. 31: Morris & Company
Jan. 31: Kingan & Company
Jan. 31: Swift & Company.

That the months of February, March, April, May and June are practicallly the same as the month of January above quoted; that the firm still bought from the concerns above mentioned and continues up to the present time (March 1921)

931 Further testified that she did not know what kind of meats were handled by the firms named and does not recollect whether any of the invoices covered pork products from those firms but she supposed they handled pork.

935 BEFORE THE FEDERAL TRADE COMMISSION

Federal Trade Commission,
Petitioner,
vs.
Swift & Company,
Defendant.
} Docket No. 453.

Chicago, Ill., June 3, 1921,
Ten o'clock A. M.

Before:
C. T. Sadler, Esq., Examiner.

Met pursuant to notice.

Appearances:

Messrs. A. N. Taylor and D. F. Haycraft, c/o Federal Trade Commission, Washington, D. C., appearing for the Federal Trade Commission.

A. H. & Henry Veeder, James M. Sheean and Frank L. Horton, Chicago, Ill., appearing for Swift & Company.

938 PROCEEDINGS.

Examiner Sadler: The hearing will come to order.

CHAN B. COLT, called as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name, Mr. Colt?
A. Chan B. Colt.
Q. Where do you live?
A. Chicago.
Q. What is your business at the present time?
A. I am in the Beef Department of Swift & Company.
Q. Employed by Swift & Company?
A. Yes, sir.
Q. How long have you been in the employ of Swift & Company?

A. Sixteen years.

Q. When you first entered the employ of Swift & Company, in what capacity were you employed?

A. At the mailing department, that is, at St. Joseph, Missouri.

939 Q. How long were you employed at St. Joseph, Missouri, in the mailing department?

A. Only a few months.

Q. What happened then?

A. I was transferred to the Banking Department.

Q. Still at St. Joseph, Missouri?

A. Yes, at St. Joseph.

Q. Do you recall about the date when this transfer took place?

A. I would say about 1905.

Q. Do you recall about the time of the year?

A. No, I do not.

Q. How long were you engaged in that capacity?

A. Approximately eight or nine years.

Q. And what happened then?

A. I was transferred to the departmental desk—the departmental department at St. Joe.

Q. At St. Joseph, Missouri?

A. Yes, sir.

Q. Can you give the date when this transfer took place, that is, about?

A. Well, you mean the year?

940 Q. Yes, the year, and as near as you can recall the time of the year?

A. I would say January, 1915, as near as I can remember.

Q. About that time anyway?

A. Yes, sir.

Q. How long were you kept at the Departmental Desk?

A. About a year?

Q. And what happened then?

A. I was transferred to chief clerk at St. Joe.

Q. How long did you remain there as chief clerk?

A. About a year.

Q. And then what happened?

A. And then I went on the road as auditor.

Q. What date would that be, as near as you can recall, that you went on the road as auditor?

A. That would be the first of 1916, I would say about in—1916, some time.

Q. In your occupation as auditor on the road, what did you do in a general way? I do not want to go into details at all?

A. I made a report of our plants in different parts of the country.

Q. Did you cover the whole United States in your traveling?

941 A. Yes, sir; I was as far west as California and as far east as Boston and New York.

Q. Do you know whether you called at all of the plants of Swift & Company?

A. Oh, no, not all; only a small percentage.

Q. Just called at certain plants that you were instructed to call at?

A. Yes, sir.

Q. From whom did you receive your instructions at that time, Mr. Colt?

A. Mr. J. M. Chaplin.

Q. And where is Mr. Chaplin located?

A. Chicago, Swift & Company.

Q. Do you know what his connection with Swift & Company was at that time?

A. The same as now. He is head of the Plant Accounting Department.

Q. Now, how long did you continue as traveling auditor?

A. Until I went to Andalusia in August, 1917.

Q. You mean Andalusia, Alabama?

A. Yes, sir.

Q. From whom did you receive instructions to go to

942 Andalusia?

A. From Mr. Chaplin.

Q. In what form were those instructions, oral or written?

A. Oral.

Q. And you received them here in Chicago, did you?

A. Here in Chicago, yes, sir.

Q. Where were the instructions given you, at the office of Mr. Chaplin in Swift & Company's office in Chicago?

A. Yes, sir.

Q. What did he instruct you to do?

A. Instructed me to go to Andalusia as auditor of the plant.

Q. As auditor of what plant?
A. Of the Andalusia Packing Company.
Q. Just when was this, as nearly as you can recall?
A. I would say this was August, 1917.
Q. Mr. Colt, can you recall now whether or not the stock of the Andalusia Packing Company had been purchased by Swift & Company before you went down there, or whether it took place after?

Mr. Horton: I object to that question, inasmuch as it assumes that the stock was purchased by Swift & Company. That fact is not in evidence in this case as yet.

943 Mr. Taylor: It is not only in evidence, but it is admitted in the answer. However, I will say, purchased for the benefit of Swift & Company, if the sensibilities of counsel are injured by the form of my former question.

Examiner Sadler: The objection will be noted.

(Question read by the reporter as amended.)

Mr. Taylor: Do you want your objection to be made just the same to the question as changed?

Mr. Horton: I do.

Q. Do you recall, Mr. Colt?
A. Yes,—I am pretty sure it was after, not at the time.

By Mr. Horton: Q. Mr. Colt, have you any knowledge as to when that stock was purchased, if it was purchased?
A. I cannot recall.

By Mr. Taylor: Q. Do you mean by that you cannot recall the exact date?
A. Not the exact date, no, sir.
Q. If I were to tell you that it took place on the 14th day of July, 1917, would you change your answer with regard to the date when you went to Andalusia?
A. No, sir.

Q. Have you any memoranda or letters or anything
944 by which you can determine the exact date when you went to Andalusia?
A. No, sir; not with me.
Q. But it is your recollection you went to Andalusia before the purchase of the stock for the benefit of Swift & Company?
A. That is my recollection.
Q. Now, about how long would you say it was before the purchase of the stock that you went to Andalusia?
A. I cannot say.
Q. Do you know Mr. J. D. Rogers?

A. Yes.
Q. Who is Mr. Rogers?
A. Do you mean at that time?
Q. Yes?
A. He was the manager of the Andalusia Packing Company.
Q. Was he also employed by Swift & Company?
A. Yes, sir.
Q. And was sent by Swift & Company to Andalusia as the Manager of the Andalusia Packing Company?
A. As far as I know, yes.
Q. Was Mr. Rogers at Andalusia when you went there, or did you precede him there?
A. Mr. Rogers came there—Mr. Rogers was there
945 about a month previous to my arriving, and came there permanently about a month after I had gotten there, as I remember it.
Q. Will you state more fully just what you mean by saying that he came there a month previously to your going there and came permanently a month after?
A. Mr. Rogers went to Andalusia I would say in the summer of 1917, and he came back to Chicago on account of sickness, and then went back to Andalusia I would say the latter part of August or last of September, 1917.
Q. By what do you fix this date?
A. Just by memory.
Q. Have you any point at the present time by which you fix it at all definitely?
A. No, sir.
Q. It is your recollection that Mr. Rogers also went to Andalusia first before the purchase of the stock of the Andalusia Packing Company for the benefit of Swift & Company, is it not?
A. Yes, sir.
Q. Do you know Walter A. Davis?
A. No, sir.
Q. Did you ever know such a man?
A. I do not recall the name at present.
946 Q. Was there a bookkeeper employed at Andalusia when you went there?
A. Yes, sir.
Q. What was his name?
A. Thinking the matter over, it was Walter A. Davis.

Q. Did Mr. Davis continue there as bookkeeper during all the time you were at Andalusia?

A. No, sir.

Q. How long a time did he continue?

A. I would say for around six or eight months.

Q. Mr. Davis was there when you went there, is that correct?

A. Yes, sir.

Q. And you think he remained six or eight months?

A. Yes, sir.

Q. During the first portion of the period that you were there?

A. Yes, sir.

Q. What did you do when you went down there, what were your duties in connection with that concern?

A. My duties were to organize the office and to put in Swift & Company's system of accounting.

947 Q. Were there any further duties that you had to perform?

A. No, sir.

Q. How long did you remain there?

A. A little over two years.

Q. And during all that time by whom were you paid, from whom did you receive your salary?

A. I was paid on the regular office pay-roll of the Andalusia Packing Company. Did you say all the time?

Q. Yes?

A. Please repeat that question.

(Question read as above recorded.)

A. From Swift & Company.

Q. That is you mean to say that your salary during the entire period that you were at Andalusia was paid by Swift & Company, is that the way you wish your answer to stand?

A. It was not incorporated under the name of Swift & Company until later on, and I do not know just how to answer that question.

Q. How did you get your pay before you went to Andalusia?

A. From Swift & Company.

Q. In what form and in what way, by check or cash?

A. By check when I was auditing on the road, and by 948 cash before.

Q. How did you get your money while you were at St. Joe, Missouri?

A. By cash.
Q. From whom?
A. From Swift & Company.
Q. Where?
A. At St. Joseph, Missouri.
Q. Cash was handed you in the St. Joseph office?
A. Yes, sir.
Q. When you went on down to Andalusia, how did you get your salary? I refer to when you first went down there, take the first week that you arrived?
A. The first week that I was there I was put on the pay-roll of the Andalusia Packing Company.
Q. How did you receive your money?
A. Received my salary in cash.
Q. From whom?
A. From the Andalusia Packing Company.
Q. Did you receive a check from Swift & Company for any part of your salary?
A. No, sir.
949 Q. Or all of your salary?
A. No, sir.
Q. How long a time did you continue to receive cash from the Andalusia Packing Company in payment of your salary?
A. Until it was incorporated under the name of Swift & Company.
Q. By saying until it was incorporated under the name of Swift & Company, do you mean until the property of the Andalusia Packing Company was assigned and conveyed to Swift & Company?
A. Yes.
Q. Do you recall when that happened?
A. My recollection is it occurred in March, 1918.
Q. And how did you get your pay after that?
A. From Swift & Company.
Q. Swift & Company from Chicago?
A. No, sir, Andalusia.
Q. In what form, check or cash?
A. Cash.
Q. Just as you had received it previously?
A. Certainly.
Q. Mr. Colt, I hand you a paper marked schedule A,
950 bearing date September 20, 1917. I will ask you to look that paper over and tell me whether you recognize it as

a paper that was prepared by yourself at the time you were at Andalusia?

A. Yes, it is the same paper, I recognize my handwriting.

Q. That paper was prepared by you?

A. Yes, sir.

Q. And states the facts to the best of your knowledge?

A. Yes, sir.

Q. The paper is marked A-22 for identification. I will ask you again to turn over all the pages of this paper and state whether you recognize them all?

A. Yes, I recognize the whole file.

Q. Page 24 of this schedule represents a carbon copy of a letter dated September 24, 1917, addressed to the Andalusia Packing Company, Andalusia, Alabama,—and signed Federal Trade Commission, by Blank, Secretary. Do you recognize that as a carbon copy of an original letter which you received about that time?

A. Let me read the letter.

(Witness reads the letter.)

A. Yes, I remember the letter.

Q. And page 26 is your reply to the same, is it not?

951 A. Yes, sir.

Q. And this letter of yours appearing at page 26 states the facts to the best of your knowledge at that time?

A. Yes, sir.

Q. Do you recognize the signature on the letter appearing at page 25?

A. Yes, sir.

Q. Whose signature is that?

A. T. E. Henderson's.

Q. Who is T. E. Henderson?

A. He is President of the First National Bank of Andalusia.

Q. And was formerly president of the Andalusia Packing Company?

A. That is my recollection.

Q. Pages 27 and 28 are duplicate copies of carbon letter, dated December 24, 1917, addressed to the Andalusia Packing Company, signed by the Federal Trade Commission by blank, Secretary. Do you recall receiving that letter, or seeing the original of that letter?

A. I don't recall that letter offhand, no.

Q. Now, I call your attention to page 29, which purports to be a reply to that letter. Do you recognize the signature?

952 A. Yes, sir.

Q. Whose signature is it?

A. Mr. Peacock's.

Q. Who was Mr. Peacock? at that time?

A. He was Secretary of Swift & Company, or the Andalusia Packing Company at that time.

Q. Was he in the employ of Swift & Company, or an officer of Swift & Company at that time, do you know?

A. I could not say for sure.

Q. What is your best knowledge on the subject?

A. My best knowledge is that he was employed by Swift & Company at that time.

Q. He is employed by Swift & Company now?

A. He was at that time.

Q. He is now, is he not?

A. I could not say.

Q. Now, I will ask you to again read this carbon copy on pages 27 and 28, and the letter on page 29, and state whether or not it is your recollection that the original letter from the Federal Trade Commission, dated December 24th was received by you at Andalusia and forwarded to Swift & Company in Chicago for their answer?

953 A. It seems after re-reading that I have a faint recollection of receiving the letter dated December 24, 1917, and forwarded it to Chicago for acknowledgment.

Mr. Taylor: Mr. Examiner, I now offer in evidence the document market schedule A, also marked A-22 for identification, regarding which the witness has just testified.

Mr. Horton: I object to the schedule marked A-22 for identification, for the reason that it is not properly identified. For the further reason that there is combined together a report called the slaughtering and meat packing special report, together with certain other correspondence, and the entire file is offered as one exhibit. The slaughtering and meat-packing report is a special report made by the packing company to the Federal Trade Commission under war time conditions, and was for the purpose and the sole purpose of enabling the Federal Trade Commission to make a so-called survey of the meat packing industry, and the matters and things stated in there are confidential, and were limited to that purpose only. Also because the exhibit as of-

fered contains letters from parties other than those connected with the respondents, and declarations of third parties cannot be used to bind the respondent in this case. For
954 the further reason that the matters and things contained therein are immaterial and irrelevant to the issues in this case.

Mr. Taylor: Mr. Examiner, with regard to the circumstances under which this report was made, I desire to say that it was not made under the war-time power conferred upon the Federal Trade Commission, but was called for by the Commission pursuant to the letter of the President, requesting the Commission, or directing the Commission to investigate the meat conditions. This letter from the President to the Chairman of the Federal Trade Commission, which bore date February 7, 1917, among other things stated:

"Pursuant to the authority conferred upon me by the Act creating the Federal Trade Commission, therefore I direct the Commission within the scope of its powers to investigate and report the facts relating to the production, ownership, manufacture, storage and distribution of food-stuffs and the products or by-products arising from or in connection with their preparation and manufacture; to ascertain facts bearing on alleged violations of the anti-trust acts, particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law for the public interest.
955 "I am aware that the Commission has additional authority in this field through the power conferred upon it to prevent certain perons, partnerships or corporations from using unfair methods of competition in commerce. I presume that you may see fit to exercise that authority upon your own initiative without direction from me."

Mr. Horton: I wish to offer a further objection, to-wit, that the report contains initials, check-marks, writings and other hieroglyphics which have been apparently put upon the said report after its receipt by the Federal Trade Commission.

Mr. Taylor: As to that, Mr. Examiner, I will expressly eliminate from the offer any of the initials and hieroglyphics referred to by counsel for Respondent.

Mr. Horton: Further, that the Andalusia Packing Company was not engaged in commerce within the meaning of that word in the Federal Trade Commission Act and the Clayton Act, and the Commission is without power or au-

thority to require the filing or production of such a document.

Examiner Sadler: The objections will be noted, and the document marked A-22 for identification, will be admitted in evidence and marked Commission's Exhibit Number 183.

956 (The document was received in evidence and marked Commission's Exhibit Number 183.)

Mr. Taylor: So that there may be no mistake as to the initials and hiergolyphics which are not included in this offer, I will state that on page one appear the following initials not offered: On the top of the page the initials "E. F. H.", and the figures "2 to 10 inclusive." On the left hand margin, about half way down the page in black ink, in a black ink circle the word "card", under which appear the initials "R. A. D." In red ink immediately below the circle, the red ink initials "H. M. B." On the bottom of the page in red ink, encircled "ver", followed by the initials "R. H. O."

On page 2—and by the paging I refer to the numbers appearing on the lower right-hand corner of each page—the right-hand margin of the page, about midway between the top and the bottom in black ink, encircled in black ink, are the initials "R. M. T." Immediately below the black ink circle appear in red ink the initials "T. J. H."

On page 3 near the lower right-hand corner appears the word "card" in pencil, immediately beneath which, in a black ink circle are the initials "E. B. O." Immediately

957 below that in red ink are the initials "T. J. H." followed by the letters "ver" "stockholdings" followed by a small —c—, these last initials and words enclosed in red ink circles. At the bottom near the right-hand edge of the page are the figures in red ink "$133,250", which are also not included in the offer.

Page 4 near the right-hand margin appear the initials in black ink, "E. G. O.", immediately under which is the word "card". Immediately beneath appears in red ink the word "cards" "ver", under which still in red ink are the initials "R. M. T."

Immediately beneath this appears in black ink circle the initials in black ink "R. M. T." and immediately below appear in red ink encircled, the initials in red ink, "T. J. H."

On page 8, near the right-hand margin, midway between the top and bottom, appear in black ink, enclosed by a black ink circle, the initials "E. A. F." Immediately beneath that,

enclosed in red ink the letters "ver", followed by the figures "10/24/17", and the initials "R. M. T."

On page 9 the figure 3 is encircled in the upper right hand corner.

On page 11, on the upper right-hand corner, the figure
958 3 in a black ink circle, near that the figure "17-b" also not included.

On page 17, at the upper right-hand corner, is the figure 3 in a black ink circle and the figure "17-A" in pencil.

On page 15, the upper right-hand corner, the figure "7-b" in pencil, immediately beneath which are the word and initials in red ink "cards ver. R. M. T."; also red check-marks appearing after the figures under the column entitled "amount".

On page 16, the upper right-hand corner, the figure 3 in black ink, and in a black ink circle the pencil figures: "8-b."

Page 17, the same marks on the upper right hand corner.

Page 18. the upper right hand corner the figure 3 encircled in black ink. In pencil the word "cards" beneath which are the initials "E. B. O." Also above the columns entitled "Number of shares" appear in red pencil marks the figures "25 or more" which are not included in the offer, with certain pencil marks after the number of shares appearing in the column.

959 On page 19 the figure 3 in black ink, enclosed in a circle appears at the right-hand corner, and certain check-marks after numbers of shares.

Page 20, upper right-hand corner, the figure 3 in black ink, enclosed in a black ink circle with certain checks after number of shares.

Page 21, the figure 3 in black ink, enclosed in a black ink circle at the right hand upper corner; also certain check-marks after certain numbers of shares; also check marks after the name "T. E. Henderson."

Page 2, the figure 3 encircled at the upper right hand corner, and check-marks after certain numbers of shares.

Page 23, figure 3 encircled in the upper right-hand corner.

Page 24, upper right-hand corner the initials "G. A. S.", immediately beneath which is the figure 3 in a black ink circle, and after that the initials "M. A."

Page 25, the upper right-hand corner, the figure 3 encircled, beneath which is "M. A." In the upper right-hand corner in pencil the word "Stephens"; also in red ink stamp, about the middle of the page "A-50927".

Page 26, upper right-hand corner, figure 3 encircled, 960 and in the left hand margin red pencil mark.

Page 27, upper right-hand corner, the figure 3 encircled, beneath which is the word "registered".

Page 28, the figure 3 encircled, beneath which is the word "registered". Lower left-hand corner "registered mail, C. G."

Page 29, upper right-hand corner, figure 3 encircled in black ink, beneath which are the initials in black ink "M. A.", between which written in pencil is the word "Robertson". Just to the left appears in pencil the initials "M. A.", immediately beneath which the figure 3 encircled; also pencil marks, immediately below that the figure "P-4" in pencil marks. Immediately above the body of the letter, in red-ink stamped, A-76240. Opposite the numbers of shares set forth are red pencil check-marks; also red pencil underlining near the bottom of the letter. On the left hand margin of the letter in pencil are the words "Cards and tables not to be revised as per these figures. G. A. S."

On the bottom of the letter in ink, "Page 4."

With regard to pages 10 and 12, before designating the portion to be eliminated, I wish to question Mr. Colt further.

961 By Mr. Taylor: Q. Mr. Colt, I call your attention to page 10 of exhibit number 183, which we have just been discussing, and call your attention to the words in ink at the top of the page: "Andalusia Packing Company, Andalusia, Alabama", and I will ask you if you can state whether or not those words were written on the statement at the time it was mailed by you to the Federal Trade Commission?

A. I think that they were, I am not positive.

Q. Anyway, this statement refers to the condition of the Andalusia Packing Company at Andalusia, Alabama?

A. Yes, sir.

Q. I also call your attention to the words in ink, "File, P-10". Do you know whether those were written on the statement at the time it was mailed?

A. I do not know.

Q. Do they have any significance in your mind?

A. Not as far as I can see.

Mr. Taylor: Then I will exclude from the offer the words in ink "File P-10" appearing at the upper right-hand corner.

Q. I call your attention to the word "revision" stamped

on this page four times, and I will ask you if that word
962 was stamped on at the time the page was mailed by you?

A. No, sir.

Mr. Taylor: And I except from the offer the word "revision" appearing on the right-hand margin and on the top margin.

Q. I call your attention to the words in ink on the lower left-hand corner: "See letter October 9th." Do you know whether that appeared on the page as it was mailed by you?

A. I don't think it did.

Mr. Taylor: Then I will exclude those words from the offer.

Q. I call your attention to the apparent ink correction in the figures immediately following the word "hogs" in the upper left-hand corner, apparently corrected to read $798,-734.84. Do you recognize that change or correction? I call your attention to the fact that the correction is made in blue ink, the same ink that the rest of the report was made out in.

A. I think that was made before the report was sent out.

Q. And that is a necessary correction?

A. Yes, sir.

Q. I call your attention to a similar correction appearing a little lower down, opposite the word "freight," in which
963 the figure 5 appears to be written in in the same character of ink, making it read "27,035.71,'" and I will ask you the same question with regard to that?

A. Well, that looks as though it was very apparent that was changed when it was sent in.

Q. Mr. Colt, I now call your attention to page 12 of the same exhibit, and opposite the word "inventory" there is a similar blue ink alteration, making the figures read: "261,-079.09," and I will ask you the same question I did with regard to the other correction?

A. I am pretty sure the blue ink figure was changed before the report went in.

Q. I call your attention to the correction or change opposite the words "sundry items", where 3 is crossed out by apparently a pencil mark and the figure 6 written above it, making it read $67,709.09, and I will ask you the same question with regard to that?

A. I think that was changed after it was sent in.

Q. Have you made a computation of the figures here to determine whether or not such change was necessary to make the figures balance?

A. Yes, A-6 was necessary in place of the 3, in order
964 to make the debit and credit sides balance.

Q. To the best of your knowledge and judgment would you say that 6 is the correct figure there?

A. Yes, I would say it was correct.

Mr. Taylor: There also appears on this page, Mr. Examiner, in the upper right-hand corner, the figure 3 in a black ink circle, which is not offered, immediately beneath which are the figures "17-A" in pencil. On the lower right hand corner are the pencil characters "O. K." immediately beneath which encircled is the letter "M", immediately below which appear the figures "9/17/17". There are also check marks in pencil and in ink opposite various figures appearing upon the page, which are likewise not included in the offer.

Q. Mr. Colt, I call your attention to the fact that opposite your name, signed on page 9 of this exhibit, is the word "Treasurer". Does that indicate that you were at that time Treasurer of the Andalusia Packing Company?

A. Yes, sir.

Q. How long did you continue to be Treasurer of the Andalusia Packing Company?

A. Until March, 1918, to the best of my memory.

Q. Until the property was conveyed to Swift & Company?

A. Yes, sir.

965 Q. How long had you been Treasurer at that time, that is on September 20, 1917; in other words, when were you elected Treasurer?

A. I cannot say offhand.

Q. What is your best recollection?

A. About the first of September.

Q. I believe you testified that Mr. Chaplin instructed you to go to Andalusia. Now, did you make reports to Mr. Chaplin from time to time?

A. Yes, sir.

Q. What was the nature of those reports, I mean in a general way, I do not ask for anything in detail?

A. In a general way they covered the conditions of the progress of the Andalusia Packing Company's office.

Q. Just what do you mean by that?

A. Principally in regard to reports we were starting to make and additional help that we might hire.

Q. Reports that you were about to make to whom?

A. We needed reports in order to carry on a packing house business at Andalusia.

Q. Do you mean you needed to make reports, or needed to receive reports?

966 A. We needed to make reports or accumulate figures in order to see the progress of the Andalusia plant.

Q. To whom did you make these reports?

A. Some were handled locally in Andalusia, others were mailed to Chicago.

Q. And those that were mailed to Chicago were mailed to whom?

A. Swift & Company, general office, Chicago.

Q. To any particular person, or were they simply addressed Swift & Company?

A. Different reports went to different departments.

Q. What was the character of the different reports?

A. I cannot say offhand.

Q. For instance, would there be killing reports?

A. Yes.

Q. And sales reports?

A. Yes.

Q. Can you think of any other reports?

A. Departmental reports of results, livestock purchasing reports and various other miscellaneous reports that I cannot recall offhand.

Q. These were the same character of reports, were

967 they not, that are usually made by branch houses of Swift & Company—branch plants of the—

A. Not made by branch houses, by plants.

Q. Branch plants I should have said?

A. Yes, made by plants.

Q. The same character of reports that were continued to be made—

A. As far as I know.

Q. —by the Andalusia branch of Swift & Company after March 30, 1918, were they not?

A. Yes, as far as I know.

Q. Well, you made these reports, did you not?

A. Yes.

Q. You know the character of them?

A. Yes, sir.

Q. You had been traveling auditor for Swift & Company for years?

A. Yes, sir.

Q. You were pretty well qualified to say that they were the same character of reports, were you not?

A. I would say that they were of the same character of reports.

968 Q. Is there any respect in which they differed from the reports—

A. As the plant grew in capacity we made more reports from time to time.

Q. But there is no respect in which these reports which were made prior to March 30, 1918, differed from those made by ordinary branch plants of Swift & Company, was there?

A. No, sir.

Q. Now, you say these reports were sent to various people. For instance, to whom was the stock-killing report sent, if you now recall?

A. To the small plants department of Swift & Company, Chicago.

Q. Who was in charge of that?

A. Mr. A. B. Swift. I am not so positive that A. B. Swift was the head of that department at that time.

Q. Is Mr. A. B. Swift now at the head of that department?

A. Yes.

Q. And has been for some years at least, according to the best of your recollection?

A. He has been for one or two years, yes, sir.

Q. Do you recall who preceded Mr. A. B. Swift as the head of that department?

969 A. I think Mr. T. H. Ingwersen.

Q. Now, to whom were the hog and cattle purchase reports made, or rather to whom were they forwarded?

A. Oh, I thought we were just talking about the hog and cattle-killing reports.

Q. But this is purchasing reports I am now asking you about?

A. You asked me to whom the purchasing reports were forwarded?

Q. I am asking now about the purchasing reports. Previously I asked about killing?

A. The purchasing reports were forwarded to the same department.

Q. The reports of departmental results, to whom were they forwarded?

A. Forwarded to the Plant Accounting Department, Chicago.

Q. Who was the head of that department?

A. Mr. J. M. Chaplin.
Q. Now, to whom were sales reports forwarded?
A. The Small Plants Department, Chicago.
Q. And the credit reports, to whom were they forwarded? Were their credit reports made?
970 A. Yes.
Q. Do you recall to whom they were forwarded?
A. Forwarded to the Credit Department.
Q. Now, I again call your attention to this carbon copy of the letter from the Federal Trade Commission, to the Andalusia Packing Company, dated December 24th. Can you recall to whom you forwarded that letter, of which that is a carbon in Chicago?
A. I am pretty sure I forwarded it to the plant accounting department, Chicago.
Q. Who do you say was the head of that department?
A. Mr. Chaplin.
Q. Now, I show you here the schedule marked A-23 for identification. Have you looked this schedule over?
A. Yes, sir.
Q. Do you recognize it as a schedule prepared by yourself?
A. Yes, sir.
Q. And forwarded by you to the Federal Trade Commission?
A. Yes, sir.
Q. The date of this schedule is what?
A. October 5, 1917.
Q. Was that prepared by you as Treasurer of the
971 Andalusia Packing Company?
A. Yes, sir.
Q. And this states the correct facts to the best of your knowledge?
A. Yes, sir.
Mr. Horton: I object to counsel leading the witness. He is putting words in his mouth the witness does not intend to say.
Mr. Taylor: Mr. Examiner, leading questions such as this are so manifestly proper, I think it is totally unnecessary and superfluous to argue that point. In preliminary questions of this sort, laying the foundation for something to follow, it is a well-recognized rule that leading questions are proper.
Q. Now, I call your attention to page 4 of this report,

and I will ask you after refreshing your recollection by examining that, if you can state the number of cattle of the various kinds specified and the weight, which were killed during the period stated on the record. First you have 1916. Can you state when you started operations in 1916?

A. My notation on the report shows June 9, 1916.

972 Q. And at the time you made that notation you thought it was correct, did you not?

A. No, I took the word of those that had operated the plant previous to my arriving at Andalusia.

Q. And forwarded that as a report to the Federal Trade Commission that it was correct?

A. Yes, sir.

Q. Over your signature as Treasurer of the company?

A. Yes, sir.

Q. And you believed it was correct then?

A. Certainly.

Q. It was correct to the best of your knowledge and belief?

A. Yes, sir.

Q. Taking the date from June 9, 1916, down to January 1, 1917, can you state the number of cattle slaughtered?

A. The report shows—

Mr. Horton: Mr. Examiner, I object to that. The report speaks for itself. The witness states that he was not at that plant at that time, therefore he could not have any more information than what is given on the report and I do not see that anything is gained by trying to make the witness contradict the report or add to it, or confirm it.

973 Mr. Taylor: Mr. Examiner, the only portions of this report which appear at all relevant here are pages 4 and 5. In the light of counsel's objection, which I of course do not concede to be well taken, I am perfectly willing to offer pages 4 and 5 in evidence. I make the offer and in doing so I exclude from it on page 4 on the left hand margin certain initials appearing in ink marks encircled in red and black ink; page 5, certain words, letters and initials in red and black ink encircled, appearing near the middle of the page, near the right hand margin. Pages 4 and 5 are offered only.

Mr. Horton: You are referring to the paging in the lower right hand corner, Mr. Taylor?

Mr. Taylor: Yes.

Mr. Horton: We object to selecting certain portions of the report, and think that if any of it is offered the whole ought

to be offered. We object to it on the further ground that it is incompetent, irrelevant and immaterial.

Mr. Taylor: I now offer page 4, excepting for the reservations before mentioned as to that page.

Examiner Sadler: Page 4 will be received in evidence and marked Commission's Exhibit 184.

974 (The document was received in evidence and marked Commission's Exhibit No. 184.)

Mr. Taylor: I now offer page 5 in evidence, subject to the same reservations as to ink marks referred to in the original offer.

Mr. Horton: We renew our objection.

Examiner Sadler: The objection will be noted and page 5 will be admitted in evidence and marked Commission's Exhibit No. 185.

(The document was received in evidence and marked Commission's Exhibit No. 185.)

Mr. Taylor: That is all for the present.

Examiner Sadler: Recess until two P. M.

Whereupon, at 12:40 P. M. a recess was taken to 2 o'clock P. M. of the same day.

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975 After recess.

Examiner Sadler: The hearing will come to order.

JOHN M. CHAPLIN, called as a witness, being duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name, Mr. Chaplin?
A. John M. Chaplin.
Q. Where do you live?
A. Chicago.
Q. And what is your business?
A. Accountant for Swift & Company.
Q. Employed by Swift & Company?
A. Yes, sir.
Q. You are the same Mr. Chaplin who was referred to this morning by Mr. Colt in his testimony, are you not?
A. Yes, sir.

Q. How long have you been in the employ of Swift & Company, Mr. Chaplin?

A. About thirty-two years.

Q. In connection with the Accounting Department during all of that time?

976 A. Yes, sir.

Q. Right here in the Chicago office?

A. No, I was at Kansas City for a number of years?

Q. How long have you been in the Chicago office?

A. About twenty years.

Q. Mr. Chaplin, what is this paper which I now show you?

A. This is a memorandum taken from our investment ledger, and it shows the transactions in connection with the purchase of the capital stock of the Moultrie Packing Company.

Q. By your ledger, you mean the ledger of Swift & Company?

A. Of Swift & Company.

Q. The respondent in this case?

A. Yes.

Q. Is that a correct transcript of the ledger, Mr. Chaplin?

A. Yes, sir.

Q. This sheet opens with the statement "statement of investment entries in connection with the acquisition of Moultrie Packing Company capital stock." Does that appear upon the ledger, or is that an explanation which was placed on there?

A. An explanation.

977 Q. And that explanation was placed on the sheet by you, or caused to be so placed?

A. Yes, sir.

Q. The next paragraph is: "Cash binders destroyed when company's time limit for maintaining such records has been reached." Is that also an explanation?

A. Yes, sir.

Q. What is the time limit referred to in that explanation, Mr. Chaplin?

A. I think it is two years if I mistake not.

Q. Do I understand it is the custom of Swift & Company to destroy the cash records or binders containing the cash records at the end of two years?

A. Yes, sir.

Q. The next paragraph is: "Transactions reflected on

Swift & Company's books as follows:" Is that also an explanation?

Q. And those four entries following were taken directly from the investment ledger?

A. Yes, sir.

Q. Is that correct?

978 A. Yes, sir.

Q. Just as they appear here?

A. Yes, sir.

Q. The following words, "Grand total investment record entries covering the above, 966 shares, $120,750," was that taken from the ledger, or was that summary placed on there by you?

A. No, the total appears on the ledger.

Q. Do the words which I have just read "grand total investment record entries covering the above" appear in the ledger?

A. No, those words do not appear on the ledger.

Q. Those words were placed by you on this sheet by way of explanation?

A. Yes, sir.

Q. Then appears, after an asterisk the words: "Purchased February 5, 1918." A corresponding asterisk appears after the entry of November 5, 1917. Will you please explain what this corresponding asterisk indicates, what it means?

A. That means that ten shares were contracted for on November 5, 1917, and we charged the Moultrie capital stock investment account with the price that we had contracted to pay, $1,250, and we credited the seller of the shares

979 pending the payment.

Q. That is, with the $1,250?

A. Yes, sir, and then on February 5th we actually paid that in cash and charged it to the account.

Q. And received the certificates?

A. Yes, sir.

Mr. Taylor: I offer in evidence the sheet identified by the witness.

Mr. Horton: Objected to on the ground that it is immaterial and incompetent to prove any of the issues in this case.

Examiner Sadler: The objection will be noted and the paper will be received in evidence and marked Commission's Exhibit Number 186.

(The paper was received in evidence and marked Commission's Exhibit Number 186.)

Mr. Horton: I do not object because it is a copy of the account on the ledger, but my objection goes to the substance of the testimony, not to the form.

Mr. Taylor: In other words, I understand there is no objection on the ground that the exhibit offered is not the best evidence.

Mr. Horton: No.

980 By Mr. Taylor: Q. Mr. Chaplin, do you recognize this paper which I hand you?

A. Yes, sir.

Q. What is that paper?

A. A deed from the Andalusia Packing Company to Swift & Company, selling certain real estate in the State of Alabama.

Q. Does that deed convey all of the real estate which was owned by the Andalusia Packing Company prior to its delivery?

A. Yes, so far as I know.

Mr. Taylor: It is conceded on the record, isn't it? Mr. Horton, that this deed conveys all of the real estate that the Andalusia Packing Company owned?

Mr. Horton: I am not exactly informed as to that matter, but I feel sure that it does.

Mr. Taylor: Would it be possible to ascertain definitely, Mr. Horton?

Mr. Horton: Yes, we will check it up and let you know.

Mr. Taylor: Unless you report that the deed does not convey all of the property owned by the Andalusia Packing Company to Swift & Company, will it be proper to as-

981 sume, for the purpose of the record that it does include all such property?

Mr. Horton: It would not be proper to so assume.

Mr. Taylor: We offer in evidence the paper just identified by the witness as a deed of the Andalusia Packing Company to Swift & Company, dated March 30, 1918, and in doing so consent, with the acquiescence of counsel for the respondent, that a copy be received and marked in lieu of the original.

Mr. Horton: We consent that the copy be received as if and when the original deed will be admitted, but we wish to object to the admission of the deed in evidence on the ground

that it is improper, immaterial and irrelevant to the issues in this case.

Examiner Sadler: The objection will be noted and the deed will be received as evidence and marked Commission's Exhibit 187.

(The document was received in evidence and marked: Commission's Exhibit Number 187.)

Mr. Taylor: Mr. Examiner, I wish to call attention to the fact that the copy received as Commission's Exhibit Number 187 is complete, excepting that it does not have attached to it a copy of the County Clerk's certificate of Cook County, Illinois, which is attached to the original, cer-
982 tifying to the authority of the notary before whom the acknowledgment was taken, and that such a certificate is attached to the original.

Q. Mr. Chaplin, do you recognize the instrument which I now hand you?

A. Yes, sir.

Q. What is it?

A. A bill of sale of the property, goods and chattels of the Andalusia Packing Company to Swift & Company.

Q. Dated?

A. The 30th day of March, 1918.

Q. Can you state whether or not that bill of sale conveys all the personal property previously owned by the Andalusia Packing Company to Swift & Company?

A. I believe it does. I am not quite sure.

Q. In other words, the words are general in their character. Do you know whether or not a more specific statement was ever made out as to the property, title to which passed by virtue of this instrument which you have just identified?

A. There was a statement furnished showing the total price of the machinery, equipment, fixtures, horses, wagons and harness. I do not think that that portion of the
983 statement was itemized. I believe that there was an itemized statement of the merchandise, also of the cash and the bills and accounts receivable.

Q. The consideration here is recited as $1,000. That was not the actual consideration, was it?

A. No, sir.

Q. Can you produce the statement to which you have just referred?

A. I can produce a statement showing the totals of those

figures that I have just referred to. I do not know whether we have the itemized inventory of goods or not, or an itemized inventory account, but we have figures that show how much each of the items amounted to.

Q. I will ask you to produce those statements, and also any further detailed information that you are able to produce, showing exactly what passed under this bill of sale?

A. Yes, sir.

Mr. Taylor: I offer in evidence the bill of sale, and as in the offer, consent that a copy be received and marked in lieu of the original.

Mr. Horton: No objection to the copy as a copy, but we object on the grounds previously stated with reference
984 to the other deed.

Examiner Sadler: The objection will be noted and the paper will be received as evidence and marked Commission's Exhibit Number 188.

(The document was received in evidence and marked: Commission's Exhibit Number 188.)

By Mr. Taylor: Q. Mr. Chaplin, do you recognize the paper which I now hand you?

A. Yes, sir.

Q. What is it?

A. It is a deed conveying certain real estate in the State of Georgia, from the Moultrie Packing Company to Swift & Company.

Q. And dated?

A. The 24th day of November, 1917.

Q. And that deed was delivered by the Moultrie Packing Company to Swift & Company?

A. Yes, sir.

Q. I will ask you the same question with regard to the Andalusia deed, which has been identified and received here as exhibit number 187.

985 A. Do you mean as to whether it conveys all of the—

Q. No, whether it was delivered by the Andalusia Packing Company to Swift & Company?

A. Yes, sir.

Q. Do you know, Mr. Chaplin, whether this deed of the Moultrine Packing Company to Swift & Company, dated November 24, 1917, which you have just identified, conveys all of the property owned by the Moultrie Packing Company at that time?

A. Yes, sir, I believe it did.

Mr. Taylor: I offer the deed in evidence and at the time when I make the offer consent that a copy be received and marked in lieu of the original.

Mr. Horton: No objection to the copy as a copy, but we renew our objection as heretofore expressed on the offer of the Andalusia deed.

Examiner Sadler: The objection will be noted, and the paper will be received as evidence and marked Commission's Exhibit Number 189.

(The document was received in evidence and marked: "Commission's Exhibit Number 189.")

986 By Mr. Taylor: Q. Do you recognize the paper I now hand you, Mr. Chaplin?

A. Yes, sir.

Q. What is it?

A. A bill of sale from the Moultrie Packing Company to Swift & Company conveying their business, including the machinery, appliances, merchandise, cash, accounts, and all the other personal and moveable property.

Q. And that was supposed to convey all of the personal property of the Moultrie Packing Company?

A. Yes, sir.

Q. Have you anywhere a list of the personal property which was actually assigned by this bill of sale?

A. No, we have no list of the—

Q. Have you a statement such as the one you referred to in connection with the Andalusia property?

A. Yes, sir.

Q. I will now ask you if you will produce that statement?

A. Yes, sir, we will.

Q. I will further ask if you are able to find any list or record of the property which was actually transferred by this bill of sale, not the general terms used, in the records anywhere of Swift & Company, if you will kindly pro-

987 duce such lists?

A. Yes, sir.

Q. Or statement. This bill of sale was actually delivered by the Moultrie Packing Company to Swift & Company, was it, Mr. Chaplin?

A. Yes, sir.

Mr. Taylor: I offer in evidence the bill of sale just identi-

fied by the witness, and in so doing consent that a copy be received and marked in evidence in lieu of the original.

Mr. Horton: No objection to the copy as a copy, but we object upon the ground the bill of sale is incompetent and immaterial to prove any of the issues in this case.

Examiner Sadler: The objection will be noted, and the paper will be received as evidence and marked Commission's Exhibit 190.

(The document was received in evidence and marked: Commission's Exhibit Number 190.)

By Mr. Taylor: Q. Mr. Chaplin, I show you Commission's Exhibit 6, and I call your attention to the initials affixed to the signature, Swift & Co. per—what are those initials?

988 A. J. G. S.

Q. Do you recognize whose initials those are?

A. Yes, sir.

Q. By whom were they placed there?

A. Mr. Smithwick.

Q. Do you know whether that was a letter written by Mr. Smithwick?

A. Yes, sir.

Q. It is written by Mr. Smithwick, or was?

A. Yes, sir.

Q. At the time that letter was written, November 23, 1917, do you know whether Mr. Smithwick was an officer of the Moultrie Packing Company?

A. I do not.

Q. Do you know whether he ever was an officer of the Moultrie Packing Company?

A. No, I do not.

Q. Was Mr. Smithwick at that time an employe of Swift & Company?

A. Yes, sir.

Q. I show you Commission's Exhibit Number 8, and also call your attention to the signature of that letter, and

989 ask you if you recognize the initials there affixed?

A. Yes, sir—J. G. S.

Q. Whose initials the they?

A. J. G. Smithwick's.

Q. Was that letter written by Mr. Smithwick?

A. Yes, sir.

Q. That letter is dated November 28, 1917. Mr. Smith-

wick was at that time an employe of Swift & Company, was he not?

A. Yes, sir. That is the statement that you were asking about.

Q. Do you mean that the paragraph on the first page of Exhibit Number 8: "Exact assets of Moultrie Packing Company were as follows," followed by items of cash, inventory, accounts receivable, defrayed expenses, fixed investment, etc., is the statement that you referred to which represented goods that were transferred by the bill of sale?

A. Yes, sir, I believe it is.

Q. Is the item of $178,515.09 the actual consideration paid for that property by Swift & Company, do you know?

A. I judge so by that letter. I would have to actually check it on the books to make sure of it.

Mr. Horton: Do you mean, Mr. Taylor, when Swift
990 & Company purchased the lands and property from the Moultrie Packing Company?

Mr. Taylor: Yes, that is what I mean; that is, that is the consideration paid for the transfer of the property which passed under the bill of sale, at least, that is what I meant to ask.

Mr. Horton: Then the answer would not be correct, because this statement refers to fixed investments, which I take it means lands and buildings.

By Mr. Taylor: Q. Is it your understanding, Mr. Chaplin, that that included real estate, as well as personal property, the item of $178,515.09?

A. Yes, sir, assuming at the same time the liabilities of the company, which were $436,186.18.

Q. That is the total value of all of the property, real estate and personal, of the Moultrie Packing Company, was $614,701.27, and their liabilities amounted to $436,186.18; that that amount of liabilities was assumed by Swift & Company and credited upon the total value of the personal property and real estate as part of the purchase price, leaving a balance of $178,515.09, which was actually paid
991 by Swift & Company to the Moultrie Packing Company?

A. Yes, sir.

Q. That is your understanding?

A. Yes, sir.

Q. Do you know how that was paid, as a matter of fact?

A. No, I do not.

Q. Was there any book entry made at that time on the books of Swift & Company?

A. Yes, I believe there was.

Q. Do you recall, Mr. Chaplin, the character of the book entry that was made representing this purchase of property from the Moultrie Packing Company? I refer to the purchase of the physical assets from the Moultrie Packing Company by Swift & Company. The sheet you now have before you is exhibit 186, which shows the investment ledger entry, representing the purchase by Swift & Company of the stock of the Moultrie Packing Company. Subsequently on November 30, 1917, Swift & Company purchased from the Moultrie Packing Company its physical assets, the net purchase amount as appearing from this statement shown on Exhibit 8, being $178,515.09. Do you know how that amount was treated on the books of Swift & Company at that time?

992 A. There would be an entry on the journal. I do not believe there was any actual transfer of cash.

Q. Do you know whether there was any ledger entry?

A. Yes, I think there was an entry on the ledger.

Q. Do you recall the nature of the ledger entry that was made?

A. I do not recall the entry itself, but it would be an entry—it should be an entry from the stock investment account to the various accounts represented by the physical assets.

Q. Now, the total entries in the investment record on the Moultrie Packing Company's account aggregated $120,750, whereas the net purchase amount of the physical assets by Swift & Company from the Moultrie Packing Company amounted to $178,515.09, according to the face of this letter, Exhibit Number 8. Do you know how the difference between those two was treated?

A. I do not think that the time is the same in both cases. There is an interval of time between the two transactions, and the question of profit or loss in the business would affect the balances.

992 By Mr. Morton: Q. Wouldn't the question of investment also affect it?

A. Yes, the question of the additional investment that may have been put into the property.

Mr. Taylor: I object to that answer as assuming something they have not shown, and move to strike it out.

Examiner Sadler: The motion to strike will be allowed.

By Mr. Horton: Q. Mr. Chaplin, if any investments were made between June, 1917 and November, 1917, that is, investments which go to enhance the value of the property, such as additional buildings, and additional equipment, would not that account for the difference between these two items?

A. Yes, there would be that difference.

Q. Isn't it true that such betterments and additions were made?

Mr. Taylor: I object to that as not proper evidence, incompetent and irrelevant.

Examiner Sadler: The objection will be noted.

Mr. Taylor: And not the proper character of evidence?

A. There were items of investment made between these two documents.

994 By Mr. Taylor: Q. I show you Commission's Exhibit 26, and ask you if you recognize the initials by which that letter is signed?

A. Yes, sir.

Q. Whose are they?

A. Mr. Smithwick's.

Q. And that letter was written by Mr. Smithwick?

A. Yes, sir.

Q. Mr. Smithwick was an employe of Swift & Company at that time, was he not?

A. Yes, sir.

Mr. Taylor: That is all at this time, Mr. Chaplin.

Examiner Sadler: Any cross examination?

Mr. Horton: I understand Mr. Chaplin has been asked to produce some additional figures, and I will defer my cross-examination until that time.

Examiner Sadler: The witness will be excused.

(Witness excused.)

HARRY C. CARR, called as a witness, having been first duly sworn, testified as follows:

995 *Direct Examination by Mr. Taylor.*

Q. What is your full name, Mr. Carr?

A. Harry C. Carr.

Q. Where do you live?

A. Chicago.

Q. What is your occupation?

A. I am connected with Swift & Company.

Q. In what capacity?
A. In the livestock buying and dressed beef department.
Q. How long have you been connected with Swift & Company in that capacity?
A. Six years.
Q. And where is your headquarters, Chicago or elsewhere?
A. Chicago.
Q. Were you employed by Swift & Company previous to the six years to which you have just referred?
A. No, except that I was with one of their subsidiary companies, the Plankinton Packing Company, of Milwaukee.
Q. How long were you with Plankinton Packing Company?
A. Twenty years, about twenty years.
Q. What was the nature of your work there?
A. Manager of the Plankinton Packing Company.
996 Q. That is, at that time you had general supervision of the whole business and works?
A. Yes, sir.
Q. Mr. Carr, are you familiar with the plant which formerly belong to the Moultrie Packing Company at Moultrie, Georgia?
A. I am not.
Q. Were you ever at Moultrie?
A. Never.
Q. You knew as a matter of fact that the stock of the Moultrie Packing Company was acquired for the benefit of Swift & Company, did you not?
Mr. Horton: I object to that question as leading.
Examiner Sadler: The objection will be noted.
A. I do not. I do not know anything about the stock of the Moultrie Packing Company.
Q. You knew that Swift & Company had some interest there—acquired some interest there about June 1, 1917, did you not?
A. I knew that they had some interest in the Moultrie Packing Company, yes, sir.
Q. Did you have anything whatever to do with the negotiations leading up to or even subsequent to the ac-
997 quisition of that interest there?
A. No, I do not remember of anything.
Q. I show you Commission's Exhibit Number 28, which is a carbon copy of a letter, or rather the minutes of a meet-

ing in the Directors' room, fourth floor, Tuesday, May 22, 1917, 9:15 a. m., and I will ask you to read that over and state whether or not it refreshes your recollection in any way, regarding the Moultrie transaction?

Mr. Horton: Did you mean to ask if it was a meeting of the Directors or a meeting held in the Directors' room, Mr. Taylor?

Mr. Taylor: A meeting held in the Directors' room. I stated it. The question is whether or not this exhibit refreshes the recollection of the witness.

A. Yes, sir, after seeing this I remember that I was present at this meeting referred to.

Q. You now recall that you were present at such a meeting, do you not, Mr. Carr?

A. I do, yes, sir.

Q. And that the things recited in these minutes actually took place at that meeting?

A. Yes, sir, I remember I was present at that meeting.

998 Q. And you remember now, do you not, that the things which are recited in these minutes actually took place at that meeting?

A. I do.

Q. Mr. Carr, do you not also recollect that you afterwards became a stockholder and a Director of the Moultrie Packing Company?

A. Yes, sir, I do.

Q. In fact, 125 shares of stock stood in your name?

A. Yes.

Q. And that 125 shares of stock was paid for by Swift & Company, was it not?

A. It was.

Q. And the certificates were endorsed by you in blank, were they?

A. I presume they were.

Q. Do you recall what you did with them?

A. I do not.

Q. To the best of your recollection, you turned them over to Swift & Company, did you not?

A. Yes, to the best of my recollection.

Q. Mr. Carr, the minutes of this meeting held in the
999 Directors' Room, appearing as Exhibit Number 28, on the second page it is stated: "Correspondence between this office and Mr. Vereen and Mr. Brooks is for the pres-

ent to be handled in the name of H. J. Nelson, except that Mr. Carr may correspond in his own name with Mr. Vereen and Mr. Brooks. Letters from Chicago are to be written on plain stationery."

Do you remember that you did correspond in your own name with Mr. Vereen or Mr. Brooks?

A. No, sir, I do not.

Q. That is, you do not recall whether you did or did not?

A. I do not recall whether I did or did not.

Q. I show you what purports to be a copy of a letter written by you under date of June 1st, 1917. I will ask you to read it and state whether or not that refreshes your recollection?

A. I recollect writing such a letter, yes, sir; to Louis F. Swift.

Q. My question was misleading. I said such a letter. That letter is to Louis F. Swift, not to Mr. Vereen, as my question implied?

A. This is just an office letter in our own office.

1000 Q. Written from one department to another?

A. That is right, a matter of detail in our own office.

Q. And that refers to the shipment of beef from Moultrie?

A. To Chicago.

Q. To Chicago. What was the nature of that shipment, I mean for what purpose was it made?

A. It was a shipment of dressed beef, as the letter shows, in the ordinary course of business, what we call canner cattle, shipped from the Moultrie plant to our Chicago cutting room, I should judge from the cost of it.

Q. Now, I show you Commission's Exhibit Number 154, and I will ask you if you recall having seen that paper before. (Showing witness paper.)

A. There is nothing to identify where it was made out. I may or may not have seen it. I really cannot tell.

Q. You are unable to recall or to determine definitely at the present time whether or not you ever did see it before?

A. No, sir.

Q. I show you Commission's Exhibit Number 3, and ask you to read it, and state whether or not you recall having seen that letter before, or the letter of which that is a copy?

A. I do not recall it, but I presume I did see it, as

1001 my initials are on it.

Q. Mr. Carr, do you recall negotiations which were

pending along in the early summer of 1917, for the acquisition of certain stock of the Andalusia Packing Company?

A. Yes, sir, I do.

Q. I show you Commission's Exhibit Number 17, and will ask you if you recall writing the original of which that letter is a copy?

A. Yes, I do.

Q. I now show you Commission's Exhibit 18, and ask you if that is a copy of the letter which was received in reply to Exhibit 17, which you have just examined?

A. I do not recollect receiving such a letter, and I presume it is in answer to the other one. I am not sure.

Q. I will ask you to again look at Exhibits 17 and 18 together, and see if that will assist you in answering the question?

A. Yes, sir, one is an answer to the other and I recognize both of them.

Q. I now show you Commission's Exhibit 20, and ask you if that is a copy of the reply which you made to Mr. Henderson's letter of July 2nd, which appears as Exhibit 18?

1002 A. Yes, sir.

Q. I show you Commission's Exhibit Number 19, and ask you if you recall writing that letter?

A. Yes, sir, I do.

Q. The last paragraph of this letter states: "Also we expect to send some one to Andalusia in the course of a few days who will be manager or acting manager of the plant, or something like that, until the organization is perfected." Do you recall whether or not that was done, Mr. Carr?

A. I cannot recall, sir, offhand, whether that was done or not. I presume it was, but I cannot recall.

Q. Do you know who went down there for Swift & Company as its manager?

A. I do not recall who went down as manager at first, at that time. Later on we had as manager Mr. Rogers.

Q. Do you recall when it was that Mr. Rogers went down there?

A. No, sir; I do not; not long after the plant was acquired, but I cannot tell.

Q. You mean not long after the purchase of the stock?

A. Yes, not long after that.

Q. Before the physical assets were actually conveyed

1003 to Swift & Company?

A. I do not remember.

Q. Some time between the two?
A. I do not remember about that.
Q. You have no recollection, though, with regard to whether it was before or after the actual conveyance of the physical assets by the Andalusia Packing Company to Swift & Company?
A. No, I do not remember.
Q. I show you Commission's Exhibit Number 23, and will ask you to examine that and state whether or not you recall writing the original of which that is a copy?
A. Yes, sir; I recall this letter.
Q. You examined the plant at Andalusia before the stock was acquired, did you not, Mr. Carr?
A. Yes, sir; I did.
Q. And went down there on behalf of Swift & Company, did you?
A. Yes, sir.
Q. What is the method by which the representatives of Swift & Company receive their expense money, by check from Swift & Company or by cash from Swift & Company, when they return?
1004 A. Expenses would be credited to their account, that is all.
Q. You turn in a voucher on your return for the amount of money you have expended, and are given a credit for that amount?
A. It might be that way, it might be several ways.
Q. How was it done in a case where you traveled for Swift & Company?
A. The way I indicated.
Q. Simply credited to your account the amount after your return?
A. Yes, sir.
Q. And your expenses on that trip were treated in the usual way, by crediting them to your account with Swift & Company on your return?
A. Yes, sir.
Q. On returning from this trip to whom did you report as to the conditions you found in Andalusia?
A. To the Directors of Swift & Company.
Q. Did you make that report in writing or orally?
A. Both ways, to the best of my recollection.
Q. It was after receiving that report, was it not, Mr.
1005 Carr, that they proceeded to acquire the stock of the Andalusia Company?

A. Yes, sir.

Q. You were afterwards a director of the Andalusia Company, were you not, Mr. Carr?

A. Yes, sir.

Q. I show you here Commission's Exhibit Number 41, and I will ask you if you recall the meeting of which that is a copy of the minutes?

A. Yes, sir, I recognize that document.

Q. I call your attention to the Resolution appearing near the end of the minutes here to the effect that G. D. Rogers be and he is hereby authorized to countersign all checks made by the corporations. I will ask you if that is the same G. D. Rogers to whom you referred a short time ago, as the manager?

A. Yes, sir.

Q. Was Mr. Rogers there at the time this meeting was held, as Manager?

A. I do not recall whether he had been appointed Manager then or not. He may have been.

Q. He may have already been at Andalusia at the
1006 time this meeting was held. This meeting was held, by the way, at Chicago. Now, Mr. Carr, I will ask you who the President was who tendered his resignation as appears by the minutes here?

A. T. E. Henderson.

Q. Mr. T. E. Henderson, former President of the Andalusia Packing Company?

A. Yes, sir.

Q. Who was Mr. T. H. Ingwersen, who was selected to succeeed Mr. Henderson as President?

A. Mr. Ingwersen was an employe of Swift & Company.

Q. In what capacity was he employed by Swift & Company?

A. He was connected with their cattle-buying department, beef department.

Q. According to the next paragraph, Mr. S. B. Milligan resigned as Vice-President. Who was Mr. Milligan, do you know?

A. I do not know, I never met Mr. Milligan.

Q. Is it your understanding that he was some local man?

A. Yes, I presume so.

Q. Some resident of Andalusia or thereabouts?

A. Or thereabouts, I presume so.

1007 Q. From the next paragraph it appears that J. J. Johnson resigned as Second Vice-President. Do you know who Mr. Johnson was?

A. I do not.

Q. Would you say to the best of your knowledge that he was probably some Andalusia man, or thereabouts?

A. I assume so.

Q. From the next paragraph it appears A. C. Darling was Secretary and Treasurer; that he tendered his resignation and it was accepted. Do you know who Mr. Darling was?

A. Yes, sir; I know Mr. Darling.

Q. Who was he?

A. He was a resident of Andalusia.

Q. It appears that Mr. C. A. Peacock was unanimously elected to fill the vacancy created by Mr. Darling's resignation as Secretary. Who is Mr. Peacock?

A. He was an employe of Swift & Company, Assistant Secretary.

Q. Assistant Secretary of Swift & Company at the time of his election?

A. Yes, sir.

Mr. Horton: Mr. Hayward was Secretary at that 1008 time, Mr. Carr?

A. Yes.

Mr. Horton: Peacock was Assistant Secretary?

By Mr. Taylor: Q. It appears that Mr. C. M. Williamson was elected Treasurer to fill the vacancy created by the resignation of Mr. Darling as Treasurer. Do you know who Mr. Williamson was?

A. Yes, Mr. Williamson was an employe of Swift & Company.

Q. In what capacity was he employed at that time?

A. I don't recollect.

Q. Mr. J. J. Maguire was elected assistant treasurer. Do you know who Mr. Maguire was?

A. Yes, sir, he was an employe of Swift & Company.

Q. Where was he employed, here in Chicago?

A. In Chicago.

Mr. Taylor: That is all.

Cross-Examination by Mr. Horton.

Q. Mr. Carr, in your direct examination you mentioned canner cattle. Will you please explain what you mean by canner cattle?

1009 A. Cattle that are ordinarily used for cutting purposes, as distinguished from what we call shop beef.

Q. And how does the quality of such cattle compare with cattle that are ordinarily used for food purposes; that is, cut up into steaks, roasts, and so forth?

A. They are not as good quality.

Q. How would you describe their appearance or their character?

A. Light in weight, not well finished.

Q. Usually thin?

A. Thin, yes.

Q. Usually small cattle?

A. Small thin cattle.

Q. On your direct examination you stated that you examined the plant of the Andalusia Packing Company before the stock was acquired. Will you please explain the occasion of your visit there and the nature of the examination?

A. We had in mind establishing a packing plant in the south at some favorable location, and we knew of this plant at Andalusia, and I went down there to look it over, called on Mr. Henderson at his office, introduced myself to him, visited the plant with him, and Mr. Emerson stated

1010 they might consider selling the plant. There was nothing definite in the way of an offer either from them or from us made at that time to the best of my recollection. I came back to Chicago and reported on the plant, location, and so forth.

Q. Why was it Swift & Company wanted to have a plant in the south?

A. We had a good many branch houses all over the south, and live stock raising was increasing down there, and we thought it would be well to look into the matter of having a plant at some favorable location in the south to supply our regular trade.

Q. What plan did you work on when you first outlined it, or what was your idea with regard to establishing a plant in the south?

Mr. Taylor: I object to the question as too indefinite and uncertain. Do you mean what plan did Swift & Company work on, or what plan did Mr. Carr work on?

Mr. Horton: What plan did Swift & Company work on?

Mr. Taylor: I object to that as Mr. Carr was not a part of Swift & Company except as an employe. He was not a director and not an officer, and presumably he received
1011 instructions from Swift & Company. If that is what your question is intended to relate to, I do not know that I have any objection to it.

Mr. Horton: Certainly, so far as the witness knows it. I do not expect him to answer anything that is not within his own knowledge.

Examiner Sadler: The objection will be noted.

A. My idea was to find the most favorable location for a plant and then consider establishing one there. By favorable location I mean taking into consideration the supply of live stock available and the transportation facilities. After studying that proposition over, we rather thought that Montgomery was the most favorable location for a plant, on account of its location and went there to look it over. Andalusia was near by Montgomery, and before doing anything definitely at Montgomery we went to Andalusia to see what they had there. When we found out there was a plant there, although the location we hardly thought was as favorable as Montgomery, and we found that the owners might consider selling it, we took it under consideration.

Q. That is to say, it was your intention to build a plant at Montgomery, was that the idea, or is that the propo-
1012 sition you were considering?

A. That was the proposition we were considering.

Q. Well now—

Mr. Taylor: Who was considering?

A. Swift & Company.

Q. You had charge of this matter for Swift & Company, did you not?

A. Yes, sir.

Q. That is, you were working it out for them?

A. I was.

Q. What caused you to change your plans with regard to building a plant at Montgomery?

A. We found that this plant was at Andalusia, which was near Montgomery, and it was doubtful whether there would be enough live-stock to keep two plants running, and if a plant had been located at Montgomery, which was probably more favorably located from a transportation standpoint, we hardly thought that the other plant would be in as favorable

a location as ours. We were not disposed to take any action to hurt those people down there, so we wanted to consider purchasing their plant, provided they were willing to sell.

That is the situation in as concise shape as I
1013 can tell you.

Q. About the time you went down to look at the plant, was Mr. Hunter with you?

A. Yes, he was.

Q. Did you receive a wire, a telegram from Mr. L. F. Swift, President of Swift & Company?

A. Yes, sir; while Mr. Hunter and I were in Montgomery, we received a telegram from Mr. Louis F. Swift, telling us not to do anything in regard to the Montgomery proposition until we had a conference.

Q. Did you people subsequently have a conference with him?

A. Subsequently had a conference with him.

Q. How soon afterwards?

A. Immediately.

Q. He came over there, or you met him somewhere?

A. He came to Montgomery while we were there.

Q. What did he say to you and what did you say to him?

Mr. Taylor: Mr. Examiner, I submit this is going too far afield in the cross-examination, too far away from the direct examination.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I object to counsel going into conversa-
1014 tions had with officers of the respondent concern here on cross-examination.

Examiner Sadler: The objection will be noted.

A. He said to us that he had heard of this other plant at Andalusia, and he wanted us to go and look it over and not do anything about Montgomery until we had made a full report on Andalusia as to the size and capacity of the plant, and as to whether or not the owners of the plant were disposed to sell it.

By Mr. Horton: Q. Did he say anything else?

A. He said that he did not feel like going ahead with Montgomery in view of other plants in that vicinity, words to that effect.

Q. Did he say why he did not feel like going ahead with Montgomery, what the effect would be on other plants?

A. He said if we should establish ourselves at Montgomery and the plant should be successful—

Mr. Taylor: Do I understand, Mr. Examiner, this is all subject to my objection?

Examiner Sadler: Yes.

Mr. Taylor: My objection is that it is not proper
1015 cross examination and it is incompetent, irrelevant and immaterial evidence. If they want to introduce it, the proper way is to put Mr. Swift on the witness stand to testify what was said. What Mr. Swift may have said at this time does not bind the Commission.

A. He said if we established ourselves at Montgomery, words to that effect, and the plant was successful and would draw live stock and interfere with the business of the other plant, that it would create a situation that he did not want to be a party to.

Q. Did he say anything that it would be better to buy the other plants even if they were not favorably located?

A. Yes, he did say that.

Q. What was that?

A. He said in effect that he would prefer to buy the other plant, even though not as favorably located as Montgomery, if the people that now owned it wanted to sell it at a reasonable price.

Q. Did you subsequently make the agreement as to price with the directors of the Andalusia Packing Company?

Mr. Taylor: That is objected to as not proper cross-examination.

1016 Examiner Sadler: The objection will be noted.

A. I went to Andalusia a second time and got an option on the shares of the Andalusia Packing Company.

Q. How did you arrive at the price to be paid for the shares, what was the basis for it?

A. It was based on their assets, land, buildings, equipment, inventory.

Q. Then what was done?

A. A value was placed upon the assets, the land, the buildings and the inventory. We agreed to take over the business of the Andalusia Packing Company at the agreed price per share.

Q. How did you arrive at the price per share?

Mr. Taylor: That is objected to, Mr. Examiner, as not proper cross examination.

Mr. Sadler: The objection will be noted.

A. We asked them what they would sell their shares for,

and they told us. We took it under consideration, and finally accepted the proposition.

Q. Was not the price placed upon the shares in relation with the number of shares to the value of the assets?

Mr. Taylor: That is objected to for the same reason.

1017 Examiner Sadler: The objection will be noted.

A. Yes, it was. We also told them that we would—if they preferred to do so we would buy their physical assets and let them liquidate their business, do it either way they wanted to sell, either buy the shares or take it over as a going concern, or we would agree on a price for their land, buildings and equipment, and they could liquidate their product on hand and their own accounts and liabilities, and they finally decided to sell the shares.

Q. To refresh your recollection a little, wasn't there some reason that you had as to why you wanted to buy the shares also?

Mr. Taylor: That is objected to, Mr. Examiner, as not proper cross examination and not competent. He has already answered the question.

Examiner Sadler: The objection will be noted.

A. We wanted to be sure to secure all of the shares, as long as we had gone into it, so that there might be no possibility of any small share-holder being dissatisfied.

Q. Isn't it true to say that you felt the only way you could buy the proposition and keep everybody satisfied, was to have each man sell and assign his particular

1018 shares of stock?

A. Yes.

Q. You felt that by that action he would have shown himself satisfied?

A. Yes, sir.

Q. Not only with the price he received for it, but with the purchaser as well?

A. Yes, sir.

Q. Isn't it true that you desired to have the good will of the people in that vicinity along with the plant?

A. Yes.

Mr. Taylor: And also of their customers.

A. Yes, sir.

Q. Isn't it also true that if you had purchased the physical assets from the corporation, that the action in selling the plant might have been taken by a majority of the stockholders, leaving the minority dissatisfied?

A. Yes, sir.

Mr. Taylor: I object to that, Mr. Examiner, as not proper cross-examination, going into the realm of speculation, and entirely outside of the scope of the cross examination; incompetent, irrelevant and immaterial.

1019 Examiner Sadler: The objection will be noted.

Q. Now, Mr. Carr, isn't it correct to say in substance, that what you did was to purchase that plant as a going concern?

A. Yes.

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

A. Yes.

Q. And that it was in effect the purchase of the physical assets and good will of the Andalusia Packing Company?

Mr. Taylor: Mr. Examiner, now before that question is answered I wish the objection to be seriously considered. If the witness be permitted to answer that question I shall expect the next one to be whether or not this proceeding shall not be dismissed.

Examiner Sadler: The objection will be sustained.

Mr. Horton: I think that is all.

Redirect Examination by Mr. Taylor.

Q. When was it you went to Andalusia, from Montgomery, can you fix the date?

1020 A. I can only fix the date by referring to this correspondence. It was in the spring of 1917 to the best of my recollection.

Q. This exhibit—this letter here, exhibit 19, dated July 6th—

A. That was after they had gotten along in the transaction. I said the spring of 1917.

Q. It was about the same time that negotiations were opened or were closed for the purchase of the Moultrie plant, was it not?

A. Yes, it was about that same time.

Q. You went down to Andalusia, and went over the books and accounts of the plant pretty carefully to ascertain the amount of business they were doing, where they were doing it, the amount of pork and beef they were selling, and the places they were selling, did you not?

A. No, I did not go over the books.

Q. Somebody made an examination of the books for you, did they not?

A. Yes.

Q. So that you knew exactly what you were doing, and knew what you were getting when you bought the stock?

1021 A. Yes, we did.

Q. Knew where the company was doing business?

A. Yes, sir, in a general way knew where they were doing business.

Q. Knew about how much it was selling in every place in which it was doing business?

A. No, sir.

Q. Didn't you look into that?

A. Not as to where they were selling it, except in a general way. That was immaterial to us. We had branch houses.

Mr. Taylor: Mr. Examiner, I move to strike out the last part of that answer as not responsive, "that was immaterial to us," as not responsive to the question.

Mr. Horton: I object to that being stricken out. I think that is responsive.

Examiner Sadler: The motion to strike will be noted.

Q. You knew that the Andalusia Packing Company, for instance, was selling goods at Birmingham, did you not?

A. Yes.

Q. Knew it was selling a very considerable amount there?

A. I did not know anything about the amount they were selling.

1022 Q. Didn't you look up or have the records looked up, to see how much they were selling there?

A. No, sir.

Q. Did you merely content yourself with ascertaining how much they were selling all over?

A. Yes, sir.

Q. You did not determine the amount of sales they were making?

A. Yes, I could determine the amount of sales they were making. I judged from the volume of business they were doing.

Q. You did determine the volume of business they were doing?

A. Approximately.

Q. You knew they were selling goods in Atlanta?

A. Yes.

Q. In Pensacola?

A. Not specifically.

Q. Did you yourself look at the books, or did you have some one else do it for you?

A. I did not look at their books at all myself.

Q. From who did you receive your information as to the condition of the company as disclosed through the books,
1023 that is, as to the amount of business that was being done?

A. A representative of Swift & Company's accounting department went to Andalusia.

Q. Who was that?

A. I am not sure, but I think it was Mr. Matthies, O. E. C. Matthies.

Q. Mr. Matthies made a report of the condition he found there, did he not?

A. Yes, sir.

Q. Did you see that report?

A. Yes, sir.

Q. Did you tell Mr. Henderson that if the stock of the Andalusia Packing Company was not sold to Swift & Company, that Swift & Company would construct a plant at Montgomery?

A. No, sir, I did not.

Q. Did you tell him that Swift & Company was contemplating the construction of a plant at Montgomery?

A. No, sir, I did not. I told him they were considering—

Q. They were considering constructing a plant at—

A. Not at Montgomery.

Q. They were considering constructing a plant in that vicinity, is that the way you put it?

1024 A. In the south.

Q. How did you put it, as nearly as you can recall?

A. I do not remember just how I did tell Mr. Henderson. I think I told him that we were looking over the southern field.

Q. Did he know that you were about closing negotiations, or had closed negotiations for the acquiring of the stock of the Moultrie Packing Company at that time?

A. I don't know whether he did or not.

Q. Why was it it was considered necessary to have two plants in the south?

A. Well, that can only be answered by saying that they were in different localities, not drawing their supplies of

live stock from the same source. There was not enough live stock tributary to both.

Q. What was the territory from which the Moultrie Packing Company drew its live stock?

A. Largely from the State of Alabama.

By Mr. Horton: Q. Do you mean Alabama or Georgia? You said Alabama.

A. The Moultrie Packing Company.

Mr. Taylor: Yes.

1025 A. I answered that question wrong. The Moultrie Packing Company I understood drew their supply largely from Georgia and Florida.

Q. Do you know how large a territory they drew their supply from, an area of how many miles?

A. No, I do not—you are talking about Moultrie?

Q. I am talking about Moultrie now. Over an area of how many miles did the Andalusia Packing Company draw their live stock from?

A. It has been so long since I have gone into that, I could not answer except in a very general way. I imagine a radius of 100 or 200 miles.

Q. And the Moultrie Packing Company did about as much business as the Andalusia, did it not, perhaps a little more?

A. I think more, I am not sure.

Q. Probably drew its live stock from an equally large territory, did it not?

A. I am not familiar enough with the Moultrie territory to answer that question.

Q. Do you know how far apart Moultrie and Andalusia are?

A. I do not know. I did know at one time, but it has gone out of my mind. On an air line they are not very far
1026 apart. There are not through lines or anything of that kind, connecting them.

Q. How was the stock transported which was bought by these various plants? By railroad, or was it driven in on the hoof?

A. Mostly by railroad, but I assume some was driven.

Q. That is, some from near-by points?

A. In the natural course of business, I presume some was driven in.

Q. Did Mr. Henderson or anybody else down there ever tell you that in the summer time it was necessary to close this

plant because they could not get enough hogs, or to close this other Andalusia plant?

A. I don't know that he told me it was necessary to close it. He told me in the summer time the supply of live stock was very very light, which is a seasonal condition that everybody is familiar with.

Q. That condition which you say everybody is familiar with existed generally throughout that section of the country, I assume, did it not, Georgia and Alabama and Florida?

A. I presume it did over Georgia and I do not remember so much about that as I do about the Andalusia.

1027 Q. So you think that everybody is not as familiar with conditions over there as they might be in Alabama?

A. They have a broader territory to draw from at Moultrie, and it is generally known the supply of hogs is small in the territory, therefore the plant that has the largest territory to draw from has more of a chance to get a supply.

Q. Their territory extended over part of Georgia, part of Alabama, and down into Florida, I believe, did it not?

A. Moultrie?

Q. Yes?

A. Generally speaking, yes.

Q. Did you consider it a better location at Moultrie than at Andalusia, that is, for the purpose of getting live stock?

A. I do not know.

Q. I take it then that you do not know as intimately what considerations actuated the respondent Swift & Company in acquiring the Moultrie stock as you do in regard to the Andalusia stock?

A. Not as intimately.

Q. Mr. Carr, you say you made a report to the Board of Directors both orally and in writing on your return from your examination. I will ask you if you can produce

1028 the copy of that report, the written report I mean.

A. I think I can.

Q. Will you please do so?

A. Yes, sir.

Mr. Taylor: That is all.

By Mr. Horton: Q. Mr. Carr, in your re-direct examination counsel for the respondent referred to the report of Mr. Matthies. I hand you herewith the document marked Exhibit Number 57, and ask you if that is a copy of that part of the report of Mr. Matthies?

A. This is apparently a report on the Moultrie Packing Company.

Q. There has been what I take to be an inference in the question of counsel for the Commission, which directs itself against the motive which led you to acquire these plants; that is to say, that you were actuated by the motive that the Andalusia Packing Company and the Moultrie Packing Company were strong competitors throughout the south in the selling end, is that right? Was there such a motive?

Mr. Taylor: I object to that question as not proper cross-examination.

1029 Mr. Horton: I will change that question.

Q. When you examined this plant didn't you direct your attention more to the production end than whether or not the supply of hogs and livestock was available?

Mr. Taylor: That is objected to.

A. Yes, I did.

Examiner Sadler: The objection will be noted.

Q. Wasn't that the basis upon which you wanted to go into that country, because it was getting to be a producing live stock country?

Mr. Taylor: That is objected to as calling for a conclusion of the witness entirely, and not proper cross-examination.

Examiner Sadler: The objection will be noted.

A. Yes.

Q. Now, as I understand it, you are the man in the Swift & Company organization who initiated the purchase of these two plants in the southern territory, that is to say, Moultrie & Andalusia, is that right?

Mr. Taylor: I object to the question as calling for a conclusion of the witness.

Mr. Horton: Not a conclusion, but a fact.

1030 Mr. Taylor: What did he say? You say initiated. Maybe he did maybe he did not.

Mr. Horton: You asked him what he did.

Mr. Taylor: I did not know of any reason, I did not ask that, and I do not see why you should go into it on cross examination. Furthermore, I object to the question as calling for a conclusion.

Examiner Sadler: The objection will be noted.

A. Yes, I think I was mainly responsible for looking into the situation of the production of live stock in the south, and following that up, we took under consideration the advisability of locating a plant in the south, either by building one or purchasing one.

Q. Isn't it true that there were some stock coming out of that territory into the St. Louis market and the Louisville market and other places where you purchase hogs?

A. Yes.

Q. Did you take into consideration the fact that you were purchasing those hogs and then shipping them back south again?

A. Yes, we did.

Q. You thought that instead of shipping them up alive and shipping them back dressed, it would be better to

1031 have a plant in that neighborhood?

A. Yes.

Mr. Taylor: I object to what the witness thought.

Examiner Sadler: The objection will be sustained.

Q. What have you to say as to that territory at the present date as a live-stock producing center?

Mr. Taylor: Is this still cross-examination?

Examiner Sadler: Do you make an objection?

Mr. Taylor: If this is intended as cross-examination, yes, I object as not proper cross-examination, going into new fields entirely.

Examiner Sadler: The objection will be sustained.

Q. Were these large plants or small plants?

A. Small plants.

Q. Do you know about what the capacity of the Andalusia plant was in June say, 1917, do you recall?

A. I cannot recall. The report that I promised to present will show what that was, but I do not recall it.

Q. I call your attention to the document marked Exhibit A-23 for identification, which gives the capacity of the Andalusia Packing Company as three cattle, no calves, 45 hogs and no sheep per hour. Is that about right?

1032 A. I think it is about approximately correct.

Q. Now, how does that compare with say the Chicago plant of Swift & Company?

A. Broadly speaking it is so small there is no comparison.

Q. That is to say, this is so small it is negligible?

A. It is negligible.

Q. Do you recall what the killing capacity was of the Moultrie Packing Company?

A. No, I do not.

Q. I call your attention to the document marked exhibit number 97, which gives the killing capacity of the Moultrie

Packing Company, that is, the slaughtering capacity per hour at 5 cattle, no calves, 60 hogs, no sheep?

A. I should think that would be substantially correct.

Q. That would be about right?

A. Yes.

Q. And the same answer would apply on the matter of comparison with a modern packing plant in this case as in the case of the Andalusia Packing Company?

A. So small as to be negligible.

Q. Mr. Carr, do you know what the capacity of the 1033 Chicago plant is here per hour?

A. I know what is on cattle, sheep and lambs. I do not know exactly what it is on hogs. Our killing capacity for cattle is 430 per hour, sheep 1,400 per hour. On hogs I am not positive.

Mr. Taylor: Was it substantially the same in 1917 when these figures of the Andalusia and the Moultrie Packing Company plants respectively were made up?

A. Yes, sir.

By Mr. Horton: Q. Are you familiar with whether or not these two plants killed up to their capacity from day to day?

A. At that time?

Q. Yes, at that time, that is to say, during the year 1917?

A. To the best of my recollection they killed capacity only part of the time.

Q. Would that be a large part of the time, or a medium part of the time, or a small part of the time?

A. A small part of the time.

By Mr. Taylor: Q. Mr. Carr, I will show you a document here, entitled "Food investigation, special report, 1034 slaughtering and meat-packing, schedule B, statistical statement," the name of the company being Swift & Company, and I will ask you if you recognize the signature appearing on page 10, according to the printed page of the report?

A. Do I recognize Mr. Hayward's signature?

Q. Yes?

A. Yes, I do.

Q. Whose signature is it?

A. T. J. Hayward, Secretary.

Q. Secretary of Swift & Company?

A. Secretary of Swift & Company.

Q. I will ask you to turn to the answer to Question 4 in this report, and state what is shown there as the killing ca-

pacity of Swift & Company at the Chicago plant, and of the Moultrie Packing Company?

A. I recognize these. Swift & Company, cattle 250, calves 1200, hogs, 1,750; sheep 1,000. And also at Chicago—this has got to be considered together, both the Chicago plants—they are separate plants, but they are handled as one—150 cattle, 350 calves, 500 hogs 350 sheep, making a total of 400 1035 cattle, 1550 calves, 1250 hogs and 1350 sheep at Chicago.

Q. And the second set of figures that you read commencing with 150 cattle, represent the killing capacity of—

A. The G. H. Hammond Company.

Q. What is the G. H. Hammond Company?

A. Part of Swift & Company.

Q. Is it a plant owned by Swift & Company as a corporation, or is it an associate corporation, if you know?

A. I am not fully positive.

Q. And the capacity is shown there of the Moultrie as how much?

A. 8 cattle per hour, no calves, 150 hogs, no sheep.

Q. Is the capacity of the Andalusia Packing Company shown there?

A. No, it is not.

Mr. Taylor: I think that is all.

Examiner Sadler: Any other re-cross examination?

Mr. Horton: I think not.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Whereupon, at 5:15 o'clock P. M. June 3, 1921, the further hearing of said cause was adjourned to June 4, 1921, at ten o'clock A. M.

1036 Chicago, Illinois, June 4, 1921,

Ten o'clock A. M.

Met pursuant to adjournment.

Parties present as before.

Examiner Sadler: The hearing will come to order.

Mr. Taylor: Mr. Examiner, Mr. Horton has just handed me the letter described in the subpoena pursuant to which Mr. Chaplin appeared yesterday. This is the letter from Albert H. & Henry Veeder to R. C. McManus, dated October 9, 1917, wherein it was stated among other things that the

Andalusia Packing Company owed over $200,000 which Swift & Company assumed and agreed to pay. This is the original letter mailed about the period of its date, and upon the assumption that Mr. Horton will acquiesce in the statement which I have made without the production of a witness, I am offering this in evidence.

Mr. Horton: I acquiesce in that part of the statement that states it is an original letter from A. H. & Henry Veeder to R. C. McManus, and is dated October 9, 1917, and was received by Mr. McManus, but I object to its introduction in evidence for the reason that it is a letter from one law-
1037 yer to another regarding their client's business, Albert H. & Henry Veeder being chief counsel for Swift & Company, and Mr. McManus being general attorney for Swift & Company, therefore the letter is a privileged communication; and further, that the letter is not competent evidence and is immaterial and irrelevant to the issues in this case.

Examiner Sadler: The objections will be noted and the letter will be received as evidence and marked Commission's Exhibit 191.

(The letter was received in evidence, and marked: Commission's Exhibit Number 191.)

CHAN B. COLT, recalled for further examination, being previously sworn, testified as follows:

Direct Examination.

By Mr. Taylor: Q. Mr. Colt, I again call your attention to the schedule A-73 for identification, and ask you to look at page 7 thereof. That page was intended by you, was it not, to show the total number of pounds of commodities named in the headings on hand at the time specified in the left-
1038 hand column?

A. Yes, sir.

Q. I observe that on January 31, 1916, you report there was no record made of stock on hand; is that correct?

A. To the best of my knowledge, yes, sir.

Q. At the time of making that statement on there, did you examine the records of the Andalusia Packing Company, to ascertain if it was possible to insert figures under any of those columns?

A. I found that the records of the Andalusia Packing Company were very incomplete.

Q. Did you find that you were unable to obtain any information as to the number of pounds of frozen beef that you had on hand on January 31, 1916?

A. I made strenuous efforts to ascertain these figures, but to no avail.

Q. And found that you could not obtain the number of pounds of smoked hams and bacon on hand on January 31, 1916?

A. Yes, sir.

Q. And was it the same with regard to dry salt pork?

A. Yes, sir.

1039 Q. On the same day?

A. Yes, sir.

Q. Pickled pork?

A. Yes, sir.

Q. Lard?

A. Yes, sir.

Q. Lard compounds and substitutes?

A. Yes, sir.

Q. And hides?

A. Yes, sir.

Q. Was the same true in regard to each month following in the left hand column of this page 7?

A. Yes, sir.

Q. Except December 31, 1916, that is, you have figures for that month?

A. That was the first available figures that I could find.

Q. Now, beginning January, 1917, January 31st, where you have no record marked, does that mean that you were unable to find the figures for that period?

A. Yes, sir.

Q. For February 28, 1917?

1040 A. Yes, sir.

Q. The marking would indicate that you were unable to find records of any figures for that month?

A. Yes, sir, that is it.

Q. And the same March 31st?

A. Yes, sir.

Q. On April 30, 1917, you have figures?

A. Yes.

Q. And those were the correct figures shown on the records of the Andalusia Packing Company at that time?

A. Yes, sir.

Q. After that the page shows no further figures. Does that indicate that your records were such that you were unable to determine the amount of the respective kinds of meat or product on hand at the times mentioned?

A. Yes, sir.

Q. Were you able to determine from your records the respective amounts of meat or products on hand at any period other than December 31, 1916, and April 30, 1917?

A. The only available records —

Q. That is, I mean during the period of time covered by this sheet from January 31, 1916, to July 31, 1917?

1041 A. The only available records that I was able to find were inserted on page 7.

Q. And those figures inserted on page 7 of that exhibit are correct?

A. To the best of my knowledge.

Mr. Taylor: I offer page 7 in evidence.

Mr. Horton: Let me cross-examine, please.

Cross-Examination.

By Mr. Horton: Q. Mr. Colt, the figures referred to by counsel for the Commission, were they shown by the books of the Andalusia Packing Company?

A. Yes, sir.

Q. And for the period covered, that is 1916 and the first seven months of 1917, did you have anything to do with making those figures?

A. No, sir.

Q. Did anyone connected with the respondent Swift & Company have anything to do with making those figures?

A. No, sir.

Q. So far as you are concerned, it was a question of producing figures which were taken from records made by

1042 somebody else?

A. That is it.

Q. With which you had no connection and had no control?

A. Yes.

Q. You had to take the books as you found them?

A. Yes.

Q. I notice that counsel has used the expression that you were not able to find any figures. Is that true or is it not true, that you were not able to find any figures?

A. My report shows that I found figures in 1916, date of

December 31st, also 1917, date of April 30th. If there were any other figures I was unable to find them at the time of making the report.

Q. By my question I assumed that you took into consideration the nature of the report that you were making, and that you took into consideration the proportion of things, and that while there might be some figures that would perhaps show some products on hand, that you did not deal with minor quantities, or with figures which would not go to make up an intelligent report, is that right?

Mr. Taylor: I object to the form of the question, and I object to the assumption of counsel for the respondent.

1043 I object to the attempt of counsel to put words into the mouth of the witness, who is manifestly a friendly witness.

Examiner Sadler: The objection will be noted.

Mr. Horton: Answer, please.

(Question read as above recorded.)

A. That is it exactly.

Mr. Horton: I object to the introduction of page 7 in evidence here for the reason that it is incompetent and irrelevant to the issues in this case, and further, the report was made up for a specific purpose and made up from figures which the respondent had nothing to do with, and with only an attempt upon the part of the witness to give the figures it had available for the purpose requested, and should not be introduced in a hearing of this kind.

Mr. Taylor: Mr. Examiner, before there is a ruling on the admissibility of this exhibit, I should like to ask the witness some further questions which seem pertinent in view of the answers he made to the questions of Mr. Horton on cross examination.

Examiner Sadler: Permission granted.

Direct Examination (Continued.)

1044 By Mr. Taylor: Q. Mr. Colt, the books from which you took these figures appearing on page 7 were the books and records of the Andalusia Packing Company, were they not?

A. Yes, sir.

Q. At the time this schedule was made up and for some months prior thereto, you had been in complete charge of the office of the Andalusia Packing Company, had you not? and the accounting department of it?

A. Let me see the date.

Q. The date is October 5, 1917, which this schedule was signed?

A. Yes, about two months.

Q. Possibly more, had you not?

A. From the middle of August I would say to the 5th of October, when the report was made.

Q. I believe you testified yesterday that you were there before the acquisition by Swift & Company of the stock of the Andalusia Packing Company?

A. Yes, sir.

Q. So if that occurred before August, you must have been there earlier than August?

A. I was under the impression that occurred in 1918, in March.

1045 Q. The acquisition of the stock?

A. I am not thoroughly posted on the acquisition of the stock.

Q. These books of the Andalusia Packing Company, you found to be correct, so far as you were ever able to check them back, did you not?

A. I was not employed to check back those old figures.

Mr. Taylor: I will ask that the witness answer the question that I asked him.

(Question read as above recorded.)

Q. I am not referring to any of the figures now, but the books of the company?

A. As far as I know they were correct.

Q. You always found them to be correct?

A. So far as I knew.

Q. And used them as the books of the company?

A. Yes, sir.

Q. Made correct entries in them?

A. Yes, sir.

Q. What attempt if any did you make to check back the amount of smoked hams and bacon which you had on hand on December 31, 1916?

1046 A. I made strenuous efforts to compile this information.

Q. What did you do, aside from looking at the books, to show what was on hand at that time?

A. As a matter of fact, these records as I remember it were not kept in a permanent file, kept more or less on a loose leaf system which had been misplaced or destroyed.

Q. From what did you take these figures?
A. I am pretty sure from their loss and gain statements.
Q. When were these loss and gain statements made out?
A. At the time they were recapped on this report.
Q. At what period of the year I mean were they made out?
A. They were not made up monthly.
Q. That is what I want to get at, when were they made up, and at what periods?
A. As I remember it, they made them only once in 1916.
Q. One loss and gain statement made up and that was on December 31, 1916?
A. That is my recollection of it.
Q. It was figured from that loss and gain statement which you took in inserting the figures as they appear on page 7 of the schedule?
A. Yes, sir.
1047 Q. That is for the date December 31st. Now, is it not a fact that you simply accepted that loss and gain statement without attempting to check back and verify the correctness of it?
A. I simply used the figures that they showed on their compiled statement.
Q. Did you examine the books to ascertain if they showed in any place the amount of goods on hand at any of these other months?
A. Yes, sir.
Q. And you found that they did not?
A. I could not find the information.
Q. Did you look for inventories?
A. Yes.
Q. What was the result of your search?
A. I could not find them.
Q. Did you make any inquiry as to whether an inventory had been made?
A. A good many.
Q. From whom did you inquire?
A. From the manager and bookkeeper.
Mr. Horton: By that you mean the former manager and the former bookkeeper?
1048 A. The former manager and the former bookkeeper.
Q. As a matter of fact, was it not a matter of knowledge at that time that the only inventories that were

made during the period covered by this page 7 were made on December 31, 1916, and April 30, 1917?

A. That is my recollection of it.

Q. And to furnish the information required on this record for any other months would have required monthly inventories for each of the months, would it not?

A. Yes, sir, it certainly would have required closing records at the close of each month.

Mr. Taylor: Now, Mr. Examiner, I will ask that the question asked of the witness by counsel for the respondent to which I objected, be again read to the witness at this time.

(The question referred to, appearing on page 1814 was again read to the witness.)

Q. How do you answer that question?

Mr. Horton: Let the reporter read the answer.

(The answer referred to, appearing on page 1815 was read to the witness.)

Q. Now will you explain exactly what you meant by that answer?

1049 A. I meant that I put in a great deal of time, realizing that this report was of importance, and tried to find available information that I could report. As before stated, it was my recollection that they did draw off a few figures for their personal—for the previous manager's personal information, which were not kept as permanent records, and I felt that they were of no avail to this report.

Q. So that all of the information that you were able to obtain as to stock on hand at these various periods, is represented in this report; is that a correct statement?

A. Yes, sir.

Q. And you did not ignore any other figures, no matter how small or trivial they may have been?

A. Yes, if I found any other figures which I was not positive of, ignored them, otherwise I would have put them on the report.

Q. Do you mean to say that you were able to find anything on November 30, 1916, showing the amount of smoked ham and bacon on hand that you did not put in there?

A. I cannot remember that I found anything for any of these periods that I did not put in, but it is my recollection that they had some few figures that were not perma-

1050 nent records.

Q. Who had figures that were not permanent records?

A. The manager.
Q. How did the manager get these figures?
A. I think he compiled them himself.
Q. Were they not a part of the Accounting Department?
A. I did not consider them as such.
Q. Did he refuse to let you see them?
A. No, sir.
Q. Did you ask him to see them?
A. Yes.
Q. What did he say?
A. He said they were not complete.
Q. What became of those figures?
A. I do not know.
Q. Did you ever see them?
A. I think that I did.
Q. In whose possession were they when you saw them?
A. Probably in the Manager's.
Q. Who is the Manager?
A. Mr. Connor.
Q. Did you ever see them after that?
1051 A. No, sir.
Q. Up to what time did you have charge of the records and books in the office of the Andalusia Packing Company, how late a time?
A. Starting with about the middle of August, 1917.
Q. Up to how late a time, when did you leave there?
A. Well, I was transferred from charge of the office to the selling end after I had been there about eight months.
Q. When was it that your custody and control over the books and records of the Andalusia Packing Company ceased?
A. As near as I can remember, about May, 1918.
Q. And during all of that time these figures that you say Mr. Connor had were never a part of the papers, records or documents that were in your control or under your custody, is that correct?
A. That is it.
Mr. Taylor: Now, I again offer page 7 of the exhibit.
Mr. Horton: We renew and repeat our objections.
Examiner Sadler: The objections will be noted and the page will be received as evidence and marked Commission's Exhibit Number 192.
1052 (The document was received in evidence and marked: Commmission's Exhibit No. 192.)
Mr. Taylor: That is all.

Cross-Examination by Mr. Horton.

Q. Mr. Colt, when you said that you went to Andalusia before the stock was purchased by Swift & Company, to what did you have reference and what did you mean by the word stock, or to what time were you referring?

A. I think what I meant was at the time Swift & Company purchased the stock of the Andalusia Packing Company.

Q. By that do you mean the capital stock or do you mean the physical assets?

A. I meant the physical assets.

Q. What time were you referring to, what time of the year, what month?

A. May I say something without its being taken down?

Q. Just talk for the record.

A. Did I make this statement today or yesterday?

Q. Counsel for the Commission seemed to assume that you made it yesterday.

Mr. Taylor: Mr. Examiner, all we want is the correct
1053 date when Mr. Colt went to Adalusia. I assume that he has records here in Chicago which will show when he did go. Now, if he will look up those records and state when it was he went there, it would very greatly simplify this whole matter and cut put all these possible misunderstandings. That is all we are after.

Mr. Horton: That is just the trouble, Mr. Taylor. You have taken the words of the witness at their technical value instead of their face value, and you have endeavored to show that he went there before Swift & Company purchased the capital stock.

Mr. Taylor: That is what he stated.

Mr. Horton: If such was the case—

Mr. Taylor: That is what he stated.

Mr. Horton: If—I feel sure the witness did not mean that, because he stated he went there—

Mr. Taylor: If he did not mean that I would be very pleased to have him correct it on the record.

Mr. Horton: That is just what we are trying to do now.

Mr. Taylor: What we are really trying to get at are the facts. If he can look up this record—

1054 By Mr. Horton: Q. Mr. Colt, Mr. Taylor makes a distinction between the alleged purchase of the capital stock of the Andalusia Packing Company, meaning the

shares which are part of the physical corporation of the Andalusia Packing Company, which he claims took place some time in June or July, and he is trying to place you in Andalusia before that, and that is what he means when he says the purchase of the stock, he means the capital stock, the corporate shares. I take it you did not refer to that, is that correct?

A. Absolutely correct.

Q. You do not know anything about that, do you?

A. No, sir.

Q. You do not know when they were purchased, if they were purchased?

A. I did not even know about the Andalusia plant.

Q. What you are referring to by the stock, you mean when the physical assets were taken over by Swift & Company in March, 1918?

A. Certainly.

Q. Yesterday you spoke about sending reports to Chicago after you had been down there in charge of the books. I will ask you if those were reports of future or past 1055 transactions?

A. They were reports of past transactions.

Q. You went ahead and transacted your business and then sent your reports in as shown by the books?

A. Yes, sir.

Mr. Horton: That is all.

By Mr. Taylor: Q. Mr. Colt, records here in Chicago will show when you went to Andalusia, will they not?

A. Yes, I think they will.

Q. I will ask you to look up those records and determine exactly when it was, and let us know on Monday.

Mr. Horton: Mr. Taylor, I feel like explaining that Mr. Colt is going on his vacation today.

(At this point the witness went to the telephone, after which he resumed the stand.)

The Witness: After telephoning to the office of Swift & Company I am informed that records there show that I went to Andalusia on August 13, 1917.

(witness excused.)

1056 C. H. WALLOW, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. What is your full name, Mr. Wallow?
A. C. H. Wallow.
Q. Where do you live, Mr. Wallow?
A. Chicago.
Q. What is your occupation?
A. Clerk.
Q. What kind of a clerk?
A. At the present time I am confidential clerk.
Q. For whom?
A. For the estate of G. F. Swift.
Q. Are you in the employ of Swift & Company?
A. Yes, sir.
Q. How long have you been in the employ of Swift & Company?
A. About twenty years.
Q. Continuously?
A. Yes, sir.
1057 Q. Received your salary from Swift & Company during all of those twenty years?
A. Yes, sir.
Q. During what part of the twenty years that you were in the employ of Swift & Company did you not receive your salary from Swift & Company?
A. From June until November, 1917.
Q. Who paid you your salary during that time?
A. The Moultrie Packing Company.
Q. How do you receive your money, by check, cash or—
A. By check.
Q. By whom was the check signed?
A. By the Moultrie Packing Company, power of attorney of the party who was acting at that time.
Q. Who was that?
A. Mr. C. E. Hurst.
Q. Where was this check drawn?
A. Moultrie, Ga.
Q. On what bank?
A. Various banks, three banks that were located in Moultrie.

Q. What were the names of hese three banks?

1058 A. Moultrie Banking Company; First National Bank and Citizens National Bank. We did business with all three banks.

Q. During that time did you receive no salary whatever from Swift and Company?

A. No, sir.

Q. Part of your work was not paid by Swift & Company during that period that you were receiving these checks from the Moultrie Packing Company?

A. No, sir.

Q. Prior to the time that you went to Moultrie what had been your occupation with Swift & Company?

A. I was clerk in various accounting departments, at South St. Paul, and about 1915 I went out as traveling auditor, checking up our plants.

Q. Did you continue as traveling auditor up to the time that you went to Moultrie?

A. Yes, sir.

Q. And just when was that as nearly as you can now recall?

A. I said I arrived in Moultrie about June 16 or 17, 1917.

Q. When you arrived at Moultrie what did you do?

A. I just took charge of the office.

Q. Had charge of the books and accounts of the Company?

1059 A. The accounts in the office.

Q. Entire charge of the accounting end of the business?

A. Yes, sir.

Q. You or those under your control kept all the records from that time on?

A. Yes, sir.

Q. That is, I mean for so long as you remained there?

A. As long as I remained there.

Q. I believe you said that was up to November some time, 1917?

A. Yes, sir.

Q. What was that exact date of your leaving, as near as you can now recall?

A. I was there afterwards. I left there on December 11, 1920.

Q. Were you there continuously from June, 1917, until December, 1920?

A. Yes, sir.
Q. Who instructed you to go to Moultrie?
A. Mr. J. M. Chaplin.
Q. And while you were there did you make reports to anyone here in Chicago?
1060 A. Various reports on clerical matters.
Q. To whom did you make these reports?
A. Mr. Chaplin.
Q. What was the nature of these reports?
A. Just asked what we thought of the organization that we had at that time, principally to see whether they were capable timber of performing our duties as clerks.
Q. Whom do you mean asked?
A. Individual clerks we had at that time.
Q. I asked you what was the nature of these reports that you made to Mr. Chaplin. I think you must have misunderstood my question.
A. They were not reports, they were just personal observations, what I thought of the clerks we had at that time.
Q. Did you make statements and send them to him showing the progress of the business?
A. No, sir.
Q. Were any financial reports or anything of that sort sent to Chicago during the time you were there?
A. We mailed monthly result statements each month.
Q. From the time you went?
A. Yes, sir.
1061 Q. And were there any other statements that you mailed?
A. We would mail a few plant operating statements to the various departments in Chicago.
Q. What was the character of these plant operating statements?
A. The purchase of cattle, or slaughtering of cattle. The same would apply on hogs.
Q. Take the purchase of cattle and hogs, to whom was that report made?
A. We generally sent them to the Beef Department, Chicago office.
Q. How frequently were those reports made?
A. We would send them in monthly.
Q. From the time you went down there?
A. Yes, sir.

Q. Take the slaughtering reports, to what department were those sent?

A. We would send them to the Beef Department.

Q. To the Beef Department?

A. To the Beef Department.

Q. And how frequently were those reports made?

A. For a while when we first went down there, 1062 monthly, and then later on we would send them in weekly.

Q. Can you say about when you commenced sending them in weekly?

A. If I remember right, it was about the first part of December.

Mr. Horton: What year?

A. 1917.

Q. Now, about hog purchase reports, to whom did you send those?

A. They would go into our branch house Provision Department, Chicago.

Q. And those were how frequently made?

A. Some we would send in weekly, the same as on the cattle reports. It was a combination report.

Q. Which would you send weekly?

A. Slaughtering and purchasing was on the same report.

Q. That is, with regard to hogs or with regard to cattle, or both?

A. Hogs and cattle, a combination report.

Q. You say some you sent weekly. What ones did you send weekly?

A. The purchase and killing of cattle and hogs from 1063 December, 1917.

Q. Up to that time they had been sent out monthly?

A. That is, I understand the manager of the office at that time sent them in. I had nothing to do with them.

Q. What manager?

A. That was in Moultrie.

Mr. Horton: I move to strike out all the witness' testimony as to what the manager did.

Examiner Sadler: The motion to strike will be noted.

Q. Who made out these reports?

A. Clerks.

Q. What clerks?

A. Under my jurisdiction.

Q. Who were some of these clerks?
A. Mr. Hurst was one of them.
Q. Just what did Mr. Hurst do aside from drawing checks?
A. He was head bookkeeper.
Q. The keeping of the books was under your jurisdiction, control and supervision?
A. Yes, sir.
Q. What other clerks made out these reports, if any?
A. There was no other. I mailed them out myself.
1064 Q. All of these reports were made out by you and Mr. Hurst under your supervision or direction?
A. Yes, sir.
Q. Were these reports made out on regular forms, regular printed forms?
A. No, sir, they went on letter heads mostly.
Q. Moultrie letter heads, Moultrie Packing Company letter heads?
A. Yes, sir.
Q. When Mr. Chaplin instructed you to go to Moultrie did he give you any instructions?
A. No, sir.
Q. What did he say, as near as you can now recall?
A. Just go down and take charge of the office. I understood I was to take charge of the accounting matters.
Q. Was there no elaboration in the conversation?
A. No, sir.
Q. That you had with him as to what your duties were to be?
A. No, sir.
Q. You went down under a blanket authority to go down and take charge of the office?
1065 A. Yes, sir.
Q. And you did it?
A. Yes, sir.
Q. You spoke about making comments to Mr. Chaplin from time to time after you went down there as to the character of the clerical force you had and the characteristics of various men and what you thought of them. What reply, if any, did you receive from Mr. Chaplin to those comments?
A. I received none, never acknowledged them to me.
Q. Did you make any recommendations along with those reports?
A. No.

Q. Is it correct to assume that you found the men there of satisfactory character?

A. Yes.

Q. They were doing their duties well?

A. Yes, sir.

Q. No occasion to make any changes?

A. No, sir.

Q. Mr. Wallow, I show you a book marked Commission's Exhibit E for identification, and I will ask you if you recognize that as the minute book of the Moultrie Packing Company. Please look it over.

1066 A. Yes, sir.

Q. And the minutes of the Stockholders' meeting held on January 5, 1918, were signed by you as secretary of the meeting, were they not, Mr. Wallow?

A. Yes, sir.

Q. Were you at that time Secretary of the Moultrie Packing Company?

A. I was.

Q. And those minutes represent what actually took place at the meeting and are a correct transcript of the Resolutions passed?

A. Yes, sir.

Q. Do you recognize the signature above the description, Chairman of the meeting?

A. Yes.

Q. Whose signature is that?

A. Luthsinger's.

Q. Who is Mr. Luthsinger?

A. He was manager of the Moultrie Packing Company.

Q. During what period if you recall was he there as manager?

A. I do not just know exactly when he was appointed manager.

A. I do not just know exactly when he was ap-
1067 pointed manager. He went down with me in June, 1917.

Q. He was there as manager on the 5th of January, 1918?

A. Yes, sir.

Q. And for some time thereafter?

A. Yes, sir, shortly after that.

Q. I call your attention to the minutes of the Board of Directors of the Moultrie Packing Company, November 3,

1917, and ask you if you recognize the signature of the Secretary of the meeting affixed to those minutes?

A. Yes, sir, Mr. C. A. Peacock's.

Q. Who was Mr. C. A. Peacock?

A. He was Secretary of the meeting also.

Q. What other position did he hold, if any?

A. I do not just recollect his title with the Moultrie Packing Company.

Q. Did he have any title with Swift & Company?

A. Yes, sir.

Q. What was it?

A. I think he was Assistant Secretary.

Q. And this meeting was held at Chicago?

A. Yes, sir.

Q. Mr. Wallow, do you know whether or not a list
1068 or inventory of personal property was ever made up to show exactly what passed by the bill of sale from the Moultrie Packing Company to Swift & Company under date of November 3, 1917?

A. No, sir.

Q. By that do you mean you do not know?

A. I do not know.

Q. Do you know whether any of the records at Moultrie will show what property passed by this bill of sale of November 3, 1917?

A. I cannot say.

Q. This bill of sale describes the property as follows: "All machinery, appliances, equipments, tools, utensils, fixtures, furniture, horses, wagons, harness and automobiles; all merchandise manufactured and in process of being manufactured; raw material and supplies; all cash on hand or in bank; all bills and accounts receivable, and generally any and all personal or movable property of every description wherever situated, whether included in the aforesaid enumeration or not."

Now, did any of the records kept at Moultrie show what the Moultrie Packing Company owned in the way of machinery?

1069 A. Yes, sir; the company's books.

Q. What book would that appear in?

A. In their general ledger.

Q. Now, with regard to appliances, what would be your answer?

A. You mean in equipment?

Q. They have here both appliances and equipment, tools, utensils and fixtures?

A. I do not know how they were taken up on the books.

Q. Would these all appear on the ledger?

A. As tools or buildings or machinery.

Q. How about furniture?

A. That was also shown as a separate item.

Q. On the ledger?

A. To the best of my recollection, yes.

Q. How about horses?

A. They had no horses on hand.

Q. No horses at all on November 3, 1917?

A. No, sir.

Q. And wagons?

A. They had no wagons.

Q. And harness?

1070 A. They had none.

Q. And automobiles?

A. They had none.

Q. Now, what merchandise manufactured or in process of being manufactured—where would that appear on the books?

A. Well, I do not know as that would appear on their records at all, as they did not keep any inventory records in the general ledger books.

Q. Can you say at this time that that information could be found on the records anywhere at Moultrie?

A. I believe so.

Q. Where would you say?

A. I think you can possibly find it in the ledger, or might possibly find it in some form of report. I cannot just remember how it was kept at that time.

Q. Would it be possible to keep a record of the merchandise manufactured and in process of manufacture, without taking inventories from time to time?

A. Yes, sir.

Q. How would that be kept, in the form of ledger entries and ledger accounts?

A. Kept in loose papers.

1071 Q. Not kept in any book?

A. No, sir; not carried in any.

Q. If you were to go to Moultrie to endeavor to ascertain what the company had on hand in the way of merchandise on the 3rd of November, 1917, how would you go about finding it?

A. It is a hard question to answer. You might possibly be able to locate the figures.

Q. Where would you look for the purpose of locating them in the ledger first?

A. We would try the general ledger and then also investigate what files we may have on hand at the present time, running back to that date.

Q. Do you know whether or not an inventory was made at the time of this transfer of the goods of the Moultrie Packing Company to Swift & Company?

A. I do not know, no sir.

Q. You do not know?

A. I do not know.

Q. If such an inventory had been made it would have been made under your supervision and control, would it not?

A. Yes, sir.

Q. Now, what is your recollection as to whether such
1072 an inventory was or was not made?

A. I cannot say. I do not just know whether one was made for that purpose or not.

Q. That would show the amount of cash on hand in bank on the 3rd day of November, 1917 in those books?

A. The general ledger.

Q. Under what head?

A. Under the item heading of cash or banks, as far as I can recollect.

Mr. Taylor: I haven't anything further.

Cross-Examination by Mr. Horton.

Q. Mr. Wallow, you spoke in your direct examination about special reports that were made from time to time to the departments you mentioned. Were those reports of past or future business?

A. Past.

Q. And am I correct in understanding that you went ahead and transacted your business and then made your reports?

A. Yes, sir.

Mr. Taylor: Mr. Wallow, did you ever hear of a report of future business?

1073 A. Well, I have in grain transactions.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Horton: Yesterday Mr. Taylor asked me to ascertain

if the deeds conveying certain real estate from the Andalusia Packing Company and the Moultrie Packing Company to Swift & Company described all of the real estate owned by those companies. I have made inquiry and I am informed that the said deeds do and did convey all of the real estate owned by those two companies.

Whereupon, at 11:50 o'clock A. M., June 4, 1921, the further hearing of said cause adjourned to Monday, June 6, 1921, at one o'clock P. M.

1074 Chicago, Ill., June 6, 1921,

One o'clock P. M.

The hearing was called at one o'clock P. M. at the office of the Commission, and for the convenience of counsel and witnesses, adjourned to the General Office of Swift & Company, Union Stock-Yards, Chicago, at two P. M.

June 6, 1921,

Two o'clock P. M.

Parties met pursuant to adjournment.

Present: Same as before.

J. M. CHAPLIN, recalled for further examination, having been previously duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. Mr. Chaplin, you are the same Mr. Chaplin who appeared as a witness in this proceeding on Friday, are you not?

A. Yes sir.

Q. Have you been able to find any invoice or list of personal property which passed under the bill of sale
1075 executed by the Moultrie Packing Company to Swift & Company, and delivered on November 3, 1917, or by the Andalusia Packing Company, and delivered to Swift & Company on March 30, 1918?

A. Yes, I produce these two statements.

Q. What is this statement which I now hand you?

A. This is a statement covering the bill of sale of the Moultrie Packing Company, showing the class of assets and the amount of each that were transferred at that time.

Q. The statement which you have just identified includes an item here of land, $1,648.75, and buildings $105,546.38. That property was not included in the bill of sale, was it? but rather under the deed?

A. That would be covered by the deed.

Q. Can you state, Mr. Chaplin, the source from which these figures came?

A. They represent the balances shown by these accounts on the books of the Moultrie Packing Company at that time, and are represented in our books by an entry in our journal, journal sheet.

Q. And the figures were received by Swift & Company from the Moultrie Packing Company at Moultrie Georgia?

A. Yes, sir.

1076 Q. And to the best of your knowledge I assume they are correct?

A. Yes, sir.

Q. The first item here is cash, $24,425.63. Was that cash carried in various banks in the name of the Moultrie Packing Company?

A. Yes, sir, that would be money in different banks, also some money in the office.

Q. The next item is inventory, $243,789.18. Can you state what that represents?

A. That represents the book value of the meat and by-products and supplies on hand on that date.

Q. What would supplies include?

A. Supplies would include coal and boxes and salt and sugar and material for curing and material for packing.

Q. And possibly some other things?

A. Yes, all materials other than the meat and by-products.

Q. Have you any way of stating what portion represented meat and what represented materials other than meat?

A. I think about 85 per cent meat and by-products, and 15 per cent supplies, would be my estimate.

Q. How do you arrive at that estimate? Have you

1077 any figures upon which to base it, or is that merely your personal opinion?

A. That is an opinion based on my knowledge of the business, what the general average is of those commodities.

Q. Have you any definite knowledge in this case just what part of that was meat and what was not?

A. No, I have not.

Q. The next item is Accounts Receivable—$37,279.94. Do you know what that would represent, Mr. Chaplin?

A. That would represent debts due us from customers to whom we sold meat and by-products.

Q. By us do you mean the Moultrie Packing Company or Swift & Company?

A. Moultrie Packing Company.

Q. The next item is deferred expenses, $3,560.63. Can you state what that would represent?

A. That represents certain items of expense for which we have expended the money, but which covers future periods, such as taxes, insurance and other items of that kind.

Q. The next is land, $1,648.75. Do you know what that represents?

A. That would be the book value of the land.

1078 Q. On which the plant is located?

A. On which the plant is located.

Q. The next is buildings, $105,546.38. What does that represent?

A. That would be the book value of the buildings.

Q. The next is machinery, $38,562.55.

A. That would be the book value of the fixed machinery.

Q. What will be the character of that machinery, if you know?

A. Boilers, engines, dynamos, tanks, sausage machines, and a great multitude of other vessels, and also pipes for conveying steam and hot water and cold water, refrigeration, and so forth.

Q. By refrigeration do you mean cooling plant?

A. Yes.

Q. That is, the entire cooling refrigerating plant would be listed under the machinery?

A. Yes, sir.

Q. And equipment, $3,618.54, what would that represent?

A. That would be movable machinery, tools, implements; cover such items as wheelbarrows, trucks, tables, benches, mechanics' tools, knives and grind-stones.

1079 Q. The next item here is autos, $420.43. Was that one or more automobiles?

A. I imagine that would be one. I do not know how many, but I think it would be one.

Q. Furniture, $2,073.75?

A. That would be office furniture and fixtures, such as desks, chairs, typewriters, adding machines.

Q. The next item here is well, $2,285.40. What is that, the book value or the cost of making the well?

A. The cost of digging the well, or boring it.

Q. That would include the pumps and pipes and all of the equipment in connection with the well?

A. No, I think not. That probably would not include machinery.

Q. You think that would come in under the head of machinery?

A. Yes, it would include the casing of the well if there was a casing, but I don't know that it would include any pumps to extract water. That would be classed in machinery.

Q. The next is sewer, $75. That would be the cost of constructing the sewer?

A. Yes, sir.

1080 Q. The next item here is sundries, debits and credits, $146,267.59. What would that include, Mr. Chaplin?

A. That would represent advances that we had made for goods or services which we had contracted for, and we had made advances before the goods or services had arrived or had been completed.

Q. Whom do you mean by "we" in that connection?

A. The company, Moultrie Packing Company.

Q. The next item is construction, $5,047.50. What would that represent, Mr. Chaplin?

A. That would represent construction undertaken but not yet completed.

Q. That is, it would represent money paid on account of construction work?

A. Yes, it would represent money paid for labor or goods actually delivered and incorporated into construction jobs. The sundry debits and credits that I referred to before would represent money paid for goods that had not—or services that had not yet been incorporated into the company's plants for construction.

Q. How would you distinguish between the sundry debits and credits item, and the construction item?

1081 A. The construction item represents work or material that has actually been received on the plant and placed in the job. We have got the goods or services there

on the job and it is complete so far as that part of it is concerned.

Q. Does it represent work or materials placed there or money that had been paid for work or materials?

A. It represents money.

Q. Actually paid out?

A. Actually paid out.

Q. So that if there were materials there which had not been paid for, it would not appear in this $5,047.50; it would not be included in that, is that correct?

A. Not entirely so, particularly so; that is to say, we might buy a bill of lumber and use some of it on the job, and we might have charged it to the job and not paid for it until later on.

Q. All of these items which I have mentioned and which aggregate $614,701.27, according to your understanding, as I gather from your answers, represent properties which passed from the Moultrie Packing Company to Swift & Company under the deed and the bill of sale which were delivered on November 3, 1917, is that correct?

1082 A. That is correct.

Q. We find here a deduction of accounts payable and accrued expenses aggregating $436,186.18. What would that represent to the best of your knowledge and belief?

A. That would represent money for the value of goods which the Moultrie Packing Company had received, but which it still owed to other concerns.

Q. Or money which it might have borrowed?

A. Yes, money which it might have borrowed.

Q. In fact, all the money that it was owing for all things?

A. Yes, sir, its entire liabilities.

Mr. Taylor: I offer in evidence the statement just identified by Mr. Chaplin.

Mr. Horton: We object on the ground it is incompetent and immaterial.

Examiner Sadler: The objection will be noted and the statement will be received as evidence and marked Commission's Exhibit Number 193.

(The document was received in evidence and marked Commission's Exhibit Number 193.)

Q. Mr. Chaplin, do you know of any inventory or list of the personal property which passed under this bill of

1083 sale other than the items which are included in this statement shown on exhibit 193.

A. No, I do not know of any list. There are some items which I know we could not possibly produce a list on.

Q. Do you know of any place in which a list of those articles of personal property could be secured, other than at Moultrie?

A. No, I do not.

Q. To the best of your knowledge, information and belief, is there any such list as that here in Chicago?

A. No, I am sure that there is no complete list of these assets.

Q. What is this paper which I now hand you, Mr. Chaplin?

A. It is a statement of the values transferred on the bill of sale and deed between the Andalusia Packing Company and Swift & Company.

Q. The first item on this statement is cash, $16,782.56. What does that represent?

A. Money in banks or money in the office.

Q. Money in banks standing to the credit—

A. Standing to the credit of the Andalusia Packing Company.

Q. The next, inventory, $504,464.90, what does that 1084 represent?

A. Meat, by-products and supplies.

Q. Would you be able to apportion that between the meats and other assets such as supplies, any more accurately in this case than in the Moultrie Packing Company?

A. No. It is possible that we have that information in the office. It is very possible I could dig that out. I am not sure about it. The item of supplies is relatively quite small.

Q. The item accounts receivable, $24,477.02, what does that represent?

A. That represents debts due to the Andalusia Packing Company by customers to whom they had sold meat and by-products.

Q. That is, debts due at the time of the transfer on March 30, 1918?

A. Yes, sir.

Q. Deferred expenses, $4,757.96, represents expenditures made—

A. For items of expense covering future periods, such expenses as taxes and insurance.

Q. The same as you explained in connection with the Moultrie Packing Company?

A. The same.

1085 Q. The next item is designated as H. W. and H., $2,000?

A. Horses, wagons and harness.

Q. And the next is O. F. and F, $2,781.77?

A. That is office, furniture and fixtures—desks, chairs, typewriters, safes and so forth.

Q. And the next is land, $2,650—what does that represent?

A. The book value of the plant—the book value of the land on which the plant is located.

Q. Does it represent the book value of March 30, 1918? or the amount that had been paid by the Moultrie Packing Company for the real estate?

A. That would be the book value as of that date, March 30th.

Q. Item of buildings, $108,453.31, what would that represent?

A. That is the book value of the buildings as of the date of the transfer.

Q. We have here equipment, $82,096.31?

A. That represents the fixed and movable machinery and equipment of the plant.

Q. I observe that we have no item of machinery as in the Moultrie case. Would it be fair to state the equipment includes both items that are included under the head of

1086 equipment and machinery in the Moultrie statement?

A. Yes, it includes both items.

Q. I have here an item of depreciation—$3,120. Can you state what that represents?

A. That represents a percentage of the investment which is charged against operations, and is credited against the cost of the buildings and equipment for the purpose of taking care of the wear and tear.

Q. That was an estimate made as of the 30th day of March, 1918, I assume?

A. No, that was the amount which had been accumulated on the books up to that time.

Q. That is, the amount of depreciation?

A. Yes, sir.

Q. The next item is construction, $141,890. What does that represent?

A. That represents construction work which has been begun but has not yet been finished.

Q. That is, on March 30, 1918, had not been finished?
A. Had not been finished at that time.
Q. This gives a total of $746,762.73. Does that amount represent the total value of the assets which passed
1087 from the Andalusia Packing Company on March 30, 1918, to Swift & Company?
A. Yes, sir.
Q. Under liabilities the statement shows accounts and bills payable, $489,968.74. What does that represent?
A. That represents the liabilities of the Andalusia Packing Company for borrowed money and debts due to others.
Q. And the next item is accrued charges, $276.85. What does that represent?
A. That represents certain expenses which had been charged against the operations, but for which payment had not yet been made.
Q. I take it, it is fair to assume that these two items, accounts and bills payable and accrued charges, represented the total liabilities of the Andalusia Packing Company on March 30, 1918, is that correct?
A. Yes, sir; that is correct, except of course, its liability to its shareholders.
Q. Yes, certainly, stock liability, you mean?
A. Yes, sir.
Q. These assets, the aggregate value of which is $746,-762.73, I undertsand, represent the total value of
1088 the real and personal property which was transferred by the Andalusia Packing Company to Swift & Company on March 30, 1918; is that correct?
A. That is correct; yes, sir.
Mr. Taylor: I offer in evidence the statement just identified by Mr. Chaplin.
Mr. Horton: Objected to on the ground it is incompetent, immaterial, and not pertinent to the issues in this case.
Examiner Sadler: The objections will be noted and the statement will be received and marked Commission's Exhibit Number 194.
(The document was received in evidence and marked Commision's Exhibit Number 194.)
Mr. Taylor: That is all.

Cross-Examination by Mr. Horton.

Q. Mr. Chaplin, referring to the Moultrie Packing Company statement, the sundry debit and credit item, is it probable that that item includes some construction work?

A. Yes, sir; it is very likely that it includes considerable payments that we had made to contractors in connection with the new building that were working on at
1089 that time.

Q. At that time you were enlarging the plant?

A. Yes, sir.

Q. With reference to the inventory, what was the character of the years 1917 and 1918 in the packing business?

Mr. Taylor: That is objected to, Mr. Examiner, as not proper cross examination of this witness.

Examiner Sadler: The objection will be sustained.

Q. Referring to the inventory that was shown on the statement of the Moultrie Packing Company, would there be a heavy inventory or a light inventory at that time of year?

A. That ought to be the light time of the year.

Q. November 3, 1917?

A. Yes, sir.

Q. And with reference to the statement of the Andalusia Packing Company, inventory, at the time that was made out, would that be light or heavy?

A. That would be a heavy time of the year.

Q. Does the inventory of a packing house depend upon the season of the year as to whether it is light or heavy?

A. It does.

Q. How do the seasons run with particular reference
1090 to the southern plants?

A. It is heavier in the fall and the early winter, towards the first of the year, than it is earlier in the season. The low point is usually about the middle of November.

Q. It is heavier up to what period?

A. It increases into the spring and early summer.

Q. Would the market value of the products have anything to do with the amount shown on these two inventories?

A. Yes, it would have a marked effect if the values of material—

Q. What was the value of the years 1917 and 1918 as compared to other years in the packing house business?

Mr. Taylor: That is objected to as not proper cross examination of this witness and has no relation to the direct evidence.

Mr. Horton: I think Mr. Examiner, that that is explanatory of these two inventory items.

Mr. Taylor: No, I don't think it is, and even if it were I think it is not a proper way to show values at this and at other times at which you desire to compare these statements. It is not competent evidence, the values at either this time or other times.

1091 Examiner Sadler: The objection will be noted.

A. Prior years, before that time?

Q. Yes, prior and subsequent?

A. They were considerably higher than prior years, but somewhat lower than 1919, and I should say higher than 1921 and 1920.

Q. Now, in a general way how did the price of the product compare on March 30, 1918, with the price of the same product on November 3, 1917?

Mr. Taylor: That is objected to as not proper cross examination, incompetent, irrelevant and immaterial.

Examiner Sadler: The objection will be sustained.

Q. What was the general trend—the general price trend on packing house products during the years 1917 and 1918?

Mr. Taylor: That is objected to as not proper cross examination and incompetent. This witness is not introduced as an expert on prices.

Examiner Sadler: The objection will be sustained.

Mr. Horton: That is all, I think.

Examiner Sadler: Any other re-direct examination?

Mr. Taylor: No, I think not.

Mr. Horton: Just one other question, please.

1092 Q. I believe you said the prices in 1917 were higher than in previous years, and not so high as in 1919 and 1920. I will ask you if prices in 1919 and 1920 were not the highest prices known in the history of the business?

Mr. Taylor: I object to that as not proper cross examination. The answer upon which the question is based was given over my objection. I now object to elaborating upon this answer as improper cross examination, incompetent, irrelevant and immaterial, and as before stated, the witness was not produced here as an expert, has not been so qualified as an expert and there is no reason why counsel for respondent should be permitted to use him as an expert on prices on cross examination without first so qualifying him as his own witness.

Mr. Horton: You have no doubt of the witness' qualifications to answer the question, have you, Mr. Taylor?

Mr. Taylor: I do not know anything about that, Mr. Horton.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: I now move to strike out the former answers of the witness which were made over my objection, and upon which counsel for the respondent has based the last question which he asked.

1093 Examiner Sadler: The motion to strike will be noted.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused)

1094 Mr. Taylor: Counsel for the respondent has produced copy of the report of Mr. H. C. Carr, dated May 21, 1917, but upon reading it, it appears to be of such a character that it throws very little if any light upon the issues in the case, and therefore I am not offering it, anticipating that counsel would properly object to its admission as irrelevant and immaterial in this instance.

Since Mr. J. M. Chaplin left the witness stand yesterday, he has furnished to counsel a statement of the portion of the total amount appearing opposite the entry: "inventory" in the statements of the Moultrie Packing Company and the Andalusia Packing Company respectively, which represented supplies as distinguished from meats. In the case of the Moultrie Packing Company the amount shown on the memorandum furnished by Mr. Chaplin is $12,612.48. In the case of the Andalusia Packing Company, the amount shown as representing supplies is $20,004.50.

Mr. Examiner, reserving the right to introduce schedules of personal property which passed under the bills of sale executed by the Moultrie Packing Company and the Andalusia Packing Company respectively, to Swift & Company, I will now announce that I rest the Commission's case.

1095 Mr. Horton: Mr. Examiner, at the close of the Commission's case I wish to move to dismiss the respective complaints in Docket Number 453 for the following reasons:

1. Respondent repeats and renews its motions to dismiss each and all of them heretofore filed, and adopt said motions as before fully set forth at this point.

2. The evidence does not show that the respondent violated Section 5 of an Act to Create a Federal Trade Commis-

sion, define its powers and duties and for other purposes, Approved September 26, 1914, usually referred to as the Federal Trade Commission Act, nor section 7 of an Act supplementing existing laws against unlawful restraint and monopolies, and for other purposes, approved October 15, 1914, usually referred to as the Clayton Act; nor any other Act or Acts, statute or statutes.

3. The evidence shows that the Commission is without jurisdiction to enter any order, complaint, or other process in the respective complaints.

4. The evidence shows that the respondent Swift & Company and the Andalusia Packing Company and the Moultrie Packing Company, either or any of them, are not now and were not at any of the times mentioned in said evidence, 1096 engaged in interstate commerce.

5. The evidence shows that the respondent Swift & Company, the Andalusia Packing Company and the Moultrie Packing Company, either or any of them, were not engaged in commerce as that word is defined by the Federal Trade Commission Act or the Clayton Act.

6. The evidence shows that the several Acts, circumstances and transactions which the Commission has attempted to prove are intrastate transactions, and therefore the Commission is without jurisdiction.

Examiner Sadler: The motion will be denied on each and every count, and exception.

Mr. Horton: I would like to file a written motion also.

Examiner Sadler: Yes, I would like to have it in the record.

And thereupon at 12:30 o'clock P. M. an adjournment was taken to Wednesday, June 8, 1921, at ten o'clock A. M., at the rooms of the Federal Trade Commission, Room 1114 No. 14 West Washington Street, Chicago, Ill.

1097 Chicago, Ill., June 8, 1921,
Ten o'clock A. M.

Met pursuant to adjournment.

Present: Parties as before.

Examiner Sadler: The hearing will come to order.

Mr. Taylor: Mr. Examiner, on May 25th notice was served upon counsel for the Respondent that immediately upon completion of the taking of testimony in chief for the Commission in this proceeding, a motion would be made before the Examiner to proceed at once to taking evidence for the respondent. Mr. Horton has advised counsel for the Commission of the sickness and of the death yesterday of Mr. Sheean's father, and Mr. Horton's consequent inability to confer with Mr. Sheean since receiving his copy of the record in the case, Mr. Sheean having been for some weeks at Galena, Illinois, the late residence of his father; and Mr. Horton and Mr. Veeder accordingly have requested that they have a reasonable length of time, in which to prepare to proceed with the defense of the case.

This matter having been presented to the acting chief counsel, I now consent that an adjournment be taken
1098 until June 22, 1919, at 11 o'clock in the forenoon. In view of the fact that the work to be taken up by counsel for the Commission in this case may take them nearer to the southern cities in which counsel for the respondents have expressed their intention of taking certain testimony in defense, I suggest that the place for the hearing be left to be designated by the Examiner on about the 15th of this month.

Examiner Sadler: Adjourned to June 22, 1921, at 11 a. m., the place to be later designated.

Whereupon, at 10:30 o'clock A. M. June 8th, 1921, an adjournment was taken to June 22, 1921, at eleven o'clock A. M. at a place to be hereafter designated by the Examiner.

1099 UNITED STATES OF AMERICA, Filed Sep 1923.

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

I, Otis B. Johnson, Secretary of the Federal Trade Commission, do hereby certify that hereunto annexed is a true and correct transcript of the testimony taken in the above entitled case as stipulated by and between attorneys for the respective parties.

That this transcript is certified to the United States Circuit Court of Appeals for the Seventh Circuit, by reason of the filing in the said Court of a petition for review of the Order entered by said Federal Trade Commission under date of August 3, 1922.

OTIS B. JOHNSON,
OTIS B. JOHNSON,
(Seal) *Secretary, Federal Trade Commission.*

(Endorsed) Filed Sep 24 1923 Edward M. Holloway Clerk

1101 BEFORE THE FEDERAL TRADE COMMISSION.

Federal Trade Commission, *Complainant*
vs.
Swift & Company, *Respondent*
} Docket No. 453.

Atlanta, Georgia, June 22, 1921.

11:00 o'clock A. M.

Before: Clarence T. Sadler, Examiner.

Hearing resumed pursuant to adjournment at Chicago, Illinois.

Appearances:

Mr. A. H. Taylor and Mr. Everett F. Haycraft, appearing for the Federal Trade Commission.

Messrs. A. H. Veeder, Henry Veeder, James M. Sheean and Frank L. Horton, Chicago, Illinois, appearing for the respondent.

1102 M. A. BAKE called as a witness for respondent being first duly sworn, testified in substance as follows (pp. 1943 to 2052):

Direct Examination.

He is treasurer of the Purity Market Company, and lives in Atlanta, Georgia. He held that position for the last two years. Previously he had been for one year Branch Manager for Wilson & Company, located in Augusta and Columbus, Georgia and Columbia, South Carolina. Before that he was Manager for the Atlanta Hotel Supply Company here in Atlanta. That company handled all classes of meats. He has been in the meat business since he was twelve years old.

The Purity Market Company is a corporation and has thirty-seven retail meat markets in Atlanta, six outside of Atlanta, forty-three in all; two in Columbus, Georgia, one in College Park, Georgia, one in Marietta, Georgia, one in Griffin, Georgia, and one in Decatur, Georgia. These markets do not handle the Georgia pork, or soft and oily pork, except

where they are caught short on Western pork and have to buy it just for emergencies. Their trade do not want it. They would not buy it at a cheaper price than Western pork because they have never been able to give satisfaction to their trade. They find the soft and oily pork is handled by the cheaper class of markets which cater more or less to the negro trade, a cheaper class trade, that wants more quantity than they do quality.

1103 He is familiar with competitive conditions now and also before and after July 1, 1917. He noticed no particular change in competitive conditions on or about July 1, 1917, November 3, 1917, or March 30, 1918. Competition in this market has increased since 1917. There are more people now in this field—more people selling packing house products. The following companies have come into this territory since June and July, 1917, and are now selling meat here:

Independent Packing Company of St. Louis or East St. Louis.

East Side Packing Company of St. Louis.

George A. Hormel of Austin, Minn.

Evansville Packing Company of Evansville, Indiana have established branch houses.

Cincinnati Abattoir Company have come in in the last year.

John Morrell & Company of Ottumwa have come in in the last year.

The following companies are engaged in the wholesale meat business here in Atlanta, handling beef, pork and other packing house products, and have been so engaged since 1915 and previous to that time:

Swift & Company.

Cudahy Packing Company.

Wilson & Company and its predecessor, the Schwartzchild & Sulzberger Company.

all have branch houses with full facilities for handling the complete line.

The White Provision Company has a small modern packing plant established since 1907, and has been continuously engaged in the packing business here in Atlanta.

1104 J. P. Simpson, Cohen Brothers; Suptles & Company are local slaughterers and have been established for at least the past five years.

Cudahy Brothers of Milwaukee, Wisconsin, packers, are represented in this market by Mitchell Brothers.

Ferris & Company of New York—He doesn't know who represents them now.

Saunders Packing Company of Cincinnati, represented by a broker.

Kingan & Company of Indianapolis, packers, have a branch house here and handle the full line. They came into this market about 1907.

The Independent Packing Company of St. Louis are represented by a broker. They ship mixed carload lots here. They handle smoked meats, lard and fresh pork. They have been represented here for three years, to his knowledge.

Krey Packing Company handle smoked meats, lard and fresh pork, and have been represented in this market for eight or nine years.

The Houston Packing Company were represented by W. S. Rogers in this market. He doesn't know about the present time.

Hateley Brothers of Chicago did business here in carload lots. He doesn't know about the present time.

Evansville Packing Company has a branch established here. They came in about a year ago, and handle the full line.

1105 John Morrell & Company of Ottumwa, Iowa, handled the full line except carcass meats.

All of these companies have salesmen canvassing the trade around Atlanta. There is a crowd of them in here every day.

That he believes the Atlanta market is more competitive now—has more competition now, than they had the past year; there appears to be more people represented here, as to the amount of business they were doing he could not say.

During 1916, 1917, 1918 and 1919 he was familiar with this market with the exception of 1918, at which time he was at different branches around the country for Wilson & Company.

Speaking of the territory around about here, what is known as the southeast territory, they had an exceptional year in 1918 and part of 1919. At that time it was not a question of being able to sell, but a question of being able to get it. Since 1919 there has been a little slump in conditions.

In 1917, 1918 and 1919 the influx of people into Atlanta and other camp towns made an increased demand for packing house products.

In 1918 and 1919 he was in Atlanta, Columbus and Macon and Augusta, Georgia, Jacksonville, Florida, and Columbia and Spartanburg, South Carolina. Conditions in each of

these markets were the same. The number of people
1106 brought into those towns by war conditions, not only soldiers, but the civilians, increased the demand for all classes of packing house products. There were about 80,000 men in Camp Gordon here at Atlanta, 40,000 at Macon, 30,000 at Columbia, 40,000 at Jacksonville, 25,000 at Columbus, 25,000 at Spartanburg, and 30,000 at Augusta, when he was at those points.

1107 Atlanta, Georgia,
10:00 o'clock A. M. Thursday,
June 23, 1921.

F. P. RAUSCHENBERG, being first duly sworn, testified (pages 2053-2200):

Direct Examination.

He has been District Superintendent for Armour & Company for the past three and a half years. He has supervision over all of Georgia except Savannah and Valdosta, all of Alabama except Mobile. He has supervision over one house in South Carolina, two houses in North Carolina and one house in Tennessee.

Under his jurisdiction are the following towns: Albany, Georgia, Athens, Georgia, Anniston, Alabama, Atlanta, Georgia, Augusta, Georgia, Birmingham, Alabama, Bessemer, Alabama, Chattanooga, Tennessee, Columbus, Georgia, Columbia, South Carolina, Huntsville, Alabama, Macon, Georgia, Montgomery, Alabama, Selma, Alabama, Wilmington, North Carolina, Newbern, North Carolina, Cordele, Georgia, Florence, Alabama, and Huntsville, Ala.

From each of these cities the adjacent territory is worked by salesmen and otherwise.

Before being District Manager, he was Branch House Manages in Atlanta from 1915 to 1918, approximately two and one half years. Before that he was Manager for Armour & Company at Huntsville, Alabama for six years before com-
1108 ing to Atlanta. Before that he was a salesman for one year.

Armour & Company is a packer and distributes the full line of meat and provisions. Armour & Company sells Western

and Northern pork, also the Southern pork or soft and oily pork, the latter since 1916.

He is familiar with the packing house business generally and with trade conditions, particularly in Atlanta and throughout the territory. In 1917 there were approximately 250 to 300 retail markets that sold fresh meats, that is, would cut up fresh meat over the counter. There were approximately 750 retail markets and grocery stores, but all of the latter did not handle fresh meat. There were approximately 450 to 500 in 1917. In his opinion, based upon his experience, not over five per cent of the Atlanta markets would purchase soft and oily pork in 1917. That would be their experience in calling on the trade. The others would not have it at any price. He does not recall any dealers that would handle it exclusively. He does recall one dealer in town that would buy more of it than all the rest of them put together. That was their experience, but to the best of his knowledge he did not use it exclusively by any means. That was Mr. Gatlin with the Sanitary Market Company. They had four or five markets in town. Of the five per cent using the Southern pork, they would use probably forty or fifty per cent of that and the balance of firm Western pork. Armour & Co. 1109 have been selling the soft and oily pork since 1916.

Armour & Company built a small packing plant at Jacksonville and started to ship soft and oily pork. It was awful hard for them to get rid of but they insisted on his branches taking some. They had little success with it. In the Atlanta market, the majority of the trade did not want it. It is hard to cut because it is oily and it does not stand up. It is hard to cut into pork chops. The butchers object to it because it shrinks and will not hold up long in their ice box. It will not keep as well as Western pork. It does not give the satisfaction to the consuming trade. If they offered it for three or four or five cents a pound under Western pork they could create very little demand for it. Armour & Co. having a plant at Jacksonville naturally insisted on his branches selling some of it as they needed so much distribution to keep the plant in operation. They went out and worked the trade in a very conscientious manner and continued to work it that way, but with the exception of a small percentage of dealers, got very little repeat business. He recalls that this man Gatlin with the Sanitary Market Company was a very good customer for it because he wanted a cheap product to sell. By repeat orders he means that when they got a merchant to try

one shipment of soft and oily pork, they would go back to
him for the second order. They found a number of
1110 them that refused to buy the second order on the ground
that the product was not satisfactory and that they
didn't care to drive their trade away.

In the years 1916, 1917, and compared to the total volume of pork sold in this market, he would say that to the best of his knowledge not over eight or ten per cent of the fresh pork would be Southern pork—on cured products not over one and one half per cent. In 1918 he believed it would not run over ten per cent on fresh pork and not over one and one half to two per cent on dry salt pork. Since that time the volume has declined. The latter part of 1915 he found very little soft pork on the market at all.

Around 1918 the State of Georgia was supposed to rank seventh or eighth in the production of hogs. That naturally made more local pork being placed on the market; later there was less hogs. In 1915, 1916 and 1917 cotton was cheap, and the farmers paid more attention to raising hogs. Later, when the war came on, cotton brought better prices, and the Southern farmers turned their attention to cotton raising, and less attention to hogs. In 1914 and 1915 the World War broke out and export shipments stopped, and cotton took a big slump. It was then the "buy a bale" movement started all over the country.

The population of Atlanta is around 200,000, Atlanta and suburbs around 260,000. The radius that they would serve out of Atlanta, he would say contains from four hundred to
four hundred and fifty thousand people.

1111 Witness then recited names of wholesale meat dealers and packers doing business in that territory as given above by witness Bake.

They sent out salesmen to call on the trade, with prices on our products that would mean a fair margin or a small margin of profit to the branch house, keeping in mind that they must have a sufficient volume of business, with their margins of profit being small, to operate the house. They are crowding the salesmen hard for business, and if some competitor has a lower price, they meet the situation if it is possible for them to do so. At times they had to let a lot of business go by. Swift and Company and other competitors are at times selling goods under Armour & Co. cost. They must stay very close to the trade and close to the salesmen and find out just what they are up against in the market. They do business just like they do in any line. It is a business that

you have to be on your toes every minute or the other fellow will take the bulk away from you.

Leaving out of consideration for a moment the firms of Swift & Company, Morris & Company, Cudahy Packing Company and Wilson & Company since 1915, he has found competition very keen with other concerns on this market—such concerns as Cincinnati Abattoir, Krey Packing Company, Independent Packing Company and various others that were mentioned, making low prices and underselling us the same as other packers that have branch houses. They have
1112 done a great deal of business in this market. These concerns bring in peddler cars, and he sometimes thinks because they have no houses that they are not doing so much, but when he investigates and finds out how much stuff is going out over the route, he finds a great deal more of these competitors' products than he does of Armours. It makes very keen competition all the way through.

If Swift & Company, Armour & Company, Morris & Company, Wilson & Company and the Cudahy Packing Company were eliminated from this market entirely, there are so many competitors here that he would say there would be very little difference noted on competitor's prices. Everybody is fighting hard for business, and there is not enough business to be had for everybody to make a decent showing and therefore competition is very keen. If quite a few of them closed up, he believes competition would still be very keen.

Witness is handed a map marked "Respondent's Exhibit B-1" for identification, and identifies packing plants at the following points:

Jacksonville, Florida.
Moultrie, Georgia.
Tifton, Georgia.
Macon, Georgia.
Atlanta, Georgia.
Another one at Atlanta, Ga.
Andalusia, Alabama.
Birmingham, Alabama.
Another one at Birmingham, Ala.
Chipley, Florida.
Chattanooga, Tennessee.
Nashville, Tennessee.
Another one at Nashville, Tenn.
1113 Augusta, Georgia.
Savannah, Georgia.

Orangeburg, South Carolina.
Columbia, South Carolina.
Wilmington, North Carolina.
Cincinnati, Ohio.
Louisville, Kentucky.
Another one at Louisville, Ky.
Mobile, Ala.
New Orleans, La.
Evansville, Indiana.
Natchez, Miss.
Statesboro, Georgia.

Armour & Co. had a great deal of trouble introducing the oily products, and with very little success. The natural trend of the trade is toward good firm Western products in both fresh and cured pork, regardless of any inducement made on prices. He would find the products acceptable by only a very few customers; occasionally they find a customer who handled the Southern products would say they were fairly satisfactory. The competitors who were handling soft and oily products certainly did not interfere with Armour's business in any way. He never considered it serious competition.

Live Stock is the packer's raw material. He gets it from the farms. There is no reason that why a packer should prefer to get raw material from one section rather than another. He knows of no reason why a packer would not as soon handle hogs from the South as hogs from the North, if he can handle them profitably. It is the function of the packer to give the trade what they demand.

Meat is a perishable product and must be handled quickly and under proper refrigeration or there would be heavy
1114 losses, due to spoilage. It is not practical for meats to be carried over from season to season because if they stay in the freezer a certain length of time they are dark and do not bring the prices equal to the prices of fresh products or of fresh frozen products. Also, it is expensive to operate a freezer at a sufficiently low temperature to carry the products, which adds to the cost. If Armour has a supply of meat on hand and it does not sell at the price asked for it, they cut the price and keep on cutting the price until it does sell. It must be moved within a reasonable time. They must move it fast.

Cross-Examination.

That the branch houses of Armour & Co. made daily and weekly reports showing the volume of Jeaksonville pork sold during 1917; that these reports were destroyed every 30 days; that after the daily and weekly reports were made and destroyed there would be no way to know how much of
1115 the business was soft pork.

When asked by Counsel for the Commission: "Then I take it that your testimony this morning about the volume of oily or soft pork sold for back—now back in 1916-1917—was entirely from your memory of conditions at that time rather than looking up any reports on it?" Witness replied, "I could not look it up in the reports because I haven't any reports on it. My memory on that would be that the Jacksonville plant—that they insisted on his—they insisted on us taking that and handling it and the price that we could get out of it was not satisfactory and then they would insist on us taking more."

That Armour & Co. purchased a packing plant at Tifton, Ga. in July 1918. In his statement that there were 250 to 300 fresh meat markets in Atlanta in 1917 and probably between 400 and 500 markets which handled some kind of meats, he estimated the number of markets in town without having any records to base it on only the number of salesmen he had out; that he has nothing in the way of records now which would show the number of customers that he called on during the year 1917.

That he would estimate that in Atlanta and Atlanta territory in 1917 approximately 200,000 pounds of fresh pork products were sold per week; that 125,000 to 150,000 pounds of smoked products were sold per week and 300,000 to 350,000 pounds of dry salt meat sold per week, and 150,000 to
1116 200,000 pounds of lard sold per week; that of this amount about 85% to 90% of the fresh pork would be sold in Atlanta and suburbs and about 40% of the dry salt meats would be sold in the city and the other 60 or 70% in the country and about 60% of the smoked meats would be sold in the city and 40% in the country, and about 75% of the lard sold in the city proper and suburbs and 25% in the country. That the country territory referred to would be a radius of 40 miles around Atlanta.

That of the fresh pork sold in Atlanta and suburbs in 1917, about 60% was sold by the larger packers including Ar-

mour, Morris, Wilson, Swift and Cudahy, and 40% by the smaller packers. About the same percentage on smoked meats; that about 50% of the dry salt meats would be sold by the five larger packers and 50% by the smaller packers and about 40% of the lard sold in that territory would be sold by the five larger packers.

That he has heard that the Birmingham Packing Co. shipped in stuff and sold in the Atlanta market to a packer but not to same class of trade that he was selling; that he has heard of the Alabama Packing Co. selling some stuff to someone on the street but that he never checked up on the product; that the Chipley Packing Co. shipped some stuff into Atlanta through a broker or a salesman; that he never saw any of J. H. Allison, Chattanooga, stuff in Atlanta;
1117 that he has seen some of Powers Packing Co. products handling through a broker; has been as much as two cars a week of this company's product; that the Newhoff Packing Co., Nashville, Tenn., made some shipments through brokers; that the Newhoff Company had been shipping into Atlanta for a number of years but that Powers had not been coming in so long; that he has never seen any Augusta Abattoir products in Atlanta; that he has seen some of the Orangeburg, S. C. Packing Co. products sold in Atlanta through brokers or a salaried arrangement, about a car a week in 1917-1918; that he has not seen anything from the Columbia Abattoir, Columbia, S. C. in Atlanta; that he has not seen any products of the Cape Fear Packing Co., Wilmington, N. C. come into Atlanta; that he has seen a great deal of stuff coming in from the Cincinnati Abattoir into Atlanta, as much as two or three cars a week, other times a car a week; that he has known of the Louisville Packing Co. sending in as much as two cars a week; that he has known of the Vissman Packing Co. shipping in one or two cars a week, possibly 3 cars but the Vissman Packing Co. has been shipping more recently than five years back; that the Evansville Packing Co. has been coming into Atlanta for a number of years and established a branch house about a year ago they brought in quite a few cars a week before that—1, 2, 3 cars; that the Crescent Packing Co. of New Orleans had sent some beef into Atlanta market about three years ago—very little
1118 of it, but he never saw any products from the Mobile Packing Co. Mobile, Ala. shipped into Atlanta; that he has seen some products from the Natchez Packing Co., Natchez, Miss. in the Atlanta market handled by a broker

or by Wilson & Co. a few years ago; that he has seen some products from the Statesboro Packing Co. in the Atlanta market. Tifton Packing Co. shipped some products into Atlanta market and also the Macon Packing Co.; that the Moultrie and Andalusia Packing Companies also shipped products into the Atlanta market in 1916-1917 but he could not estimate how much these two plants shipped into the Atlanta market.

That he is not a cotton broker and has no recollection of the exact cost of cotton in 1918-1919; that he got his information about the price of cotton from cotton buyers.

Respondent's Exhibit No. 1, being document No. 209, issued by the Government Printing Office, and is a pamphlet entitled "Southern Live Stock Prices"—Report issued by the Federal Trade Commission, offered by respondent and received in evidence.

Redirect Examination.

Competition is very keen in Atlanta on account of there being a lot of dealers in meats and provisions for a market like Atlanta.

If the firms of Swift & Company, Armour & Company, Morris & Company, Wilson & Company and the Cudahy Packing Company were taken out of this market entirely within a short space of time, he thinks there would be just as much meat on this market without them as there was with them, the way the other packers send it in here.

1119 Meat is a mobile commodity. It is transferable from one part of the country to another, and as each packer wants to merchandise to the best advantage, they ship it to the market that will take it.

Recross Examination.

In 1917 Armour & Company had eight salesmen. They have ten now (June, 1921). That he thinks that Swift & Co. was the largest dealer in this market, have more salesmen and did a larger business; that the figures possibly might not bear him out and they might be doing a great deal more than he thought they were.

When he came to Atlanta in 1915 the White Provision Company was working the town and selling soft and oily pork.

1120

Atlanta, Georgia.
10:00 o'clock, A. M.
June 24, 1921.

R. M. REECE, called as witness on behalf of Respondent, after being duly sworn, testified as follows (pp. 2201-2209):

He is manager of the Meat Department at the Fulton market in Atlanta, Georgia and have been since October 10th last year (1920). Before that he worked for Chelena & Cefalu, 17 East Alabama Street, as manager of that meat market since 1910. Both markets handled a full line of meat. The Fulton market does not handle any Southern pork, what is known as soft and oily pork, except in the Winter—a very little of it more to meet competition than anything else. You have to handle it in good cold weather to get away with it, that is, when the weather is freezing—and in dry weather. In wet weather it won't stand up. It turns black and gets soft, and the lard will come out of it, when it is wet weather and the temperature is above freezing. It is only for short periods of the year that the weather is freezing, even in Winter in Atlanta. That Southern pork, especially this peanut—of course you can get some that is a little firm but you take the average pork you get it is soft when the weather is farm it gets sticky and slimy; when you bring it out and let it stay on the counter a little while
1121 it turns dark and gets to running water—lots of juice in the soft pork and the people don't buy it but you take the pork if you are running sales, selling it cheap, you can sell a lot of it to the cheaper class of trade. If you are selling for 35c a pound and take the soft pork and put it on sale for 25 or 30c a pound, lots of people will go and buy it, but to handle it profitably it won't hold up. He has never used it on that account. Customers never come in and especially order soft pork or specify it. If he sends it out to our customers, he very often have them send it back. As compared with Western pork from a profitable standpoint, he would say that the Southern pork must be from 4 to 8c per pound difference—the way he figures, to put the Western pork and the Southern pork on the same profit basis, you would have to buy the Southern pork from 4 to 8c per pound

under the Western. You cannot make sausage out of Southern pork altogether. You have got to get at least forty per cent Western trimmings to mix with the soft trimmings, because they are too soft. If you used all Southern trimmings you would have to have a jug to put it in.

His testimony is the result of eleven years' experience handling meats in Atlanta. He buys from Swift & Company, Morris & Company, Armour & Company, Geo.
1122 Hormell, Cudahy Packing Company, Wilson & Company, Mr. Stanaland, Mitchell Brothers, East Side Packing Company, Arnold—Chicago; in fact, from nearly all the packers. Price and quality determine where they buy their meats. Sometimes good quality is hard to get, but very seldom. He has very little trouble getting meat in this market.

1123 R. V. BERGEN, called as a witness on behalf of Respondent, after being first duly sworn, testified in substance as follows, pp. 2210-2218, 2505-2508:

That he has ascertained from the City records that in July 1917 there were 452 retail meat markets in the City of Atlanta.

1124 F. A. MITCHELL called by the respondent as a witness at Atlanta, Georgia, on June 24, 1921, after having been first duly sworn, testified in substance as follows (pp. 2218-2266):

That he is engaged in the brokerage business and the wholesale meat business since December, 1915, in the firm of Mitchell Bros., a partnership consisting of himself and brother; that they sell everything that is handled in the packing house line and have ever since they started in business.

That he represents the Krey Packing Company of St. Louis and that they sold for several others besides Krey, namely: Cudahy Bros., Cudahy, Wisconsin; Hately Bros., Chicago, Illinois; Greenwald Packing Company, Baltimore, Md.; and Higgins Bros., Omaha, Nebraska; that they solicited trade in the Atlanta vicinity in the retail market and that they have always had plenty of competitors in At-

lanta; that he thinks competition is stronger now than it has been at any time since he has been in business in Atlanta.

(Witness names a list of competitors which is practically the same as that furnished by witness Bake.)

That all the firms named have representatives calling upon the trade here in Atlanta endeavoring to sell their products, both pork and beef; that by looking at the products
1125 he can tell the difference between southern and western pork, and between southern and western beef; that is by the appearance of the product.

That based upon his observation in calling upon the trade he would say that a very small percentage of the dealers handle southern pork exclusively, and of course that was strictly among the cheaper class of markets; that he does not think there was five to ten per cent of them that would handle it exclusively; that he does not know what percentage handle seventy-five per cent of southern pork; that there is a good many of them that would handle loins or shoulders or something like that but they would not carry a full line all the time; that may be they would get in a little for Saturday trade when the weather was cold or something like that.

That in 1917 he would say, taking into consideration the amount the White Provision Company sold that not over twenty to twenty-five per cent of the pork used in the Atlanta market was southern pork; that is also taking into consideration the number of hogs slaughtered by the local slaughterers; that he noticed no difference in competition between July 1917, November 1917, and March 1918; that competition
1126 has not lessened any in Atlanta since he has been in business but that it has been increasing.

Cross-Examination.

That it was his observation that the bulk of soft and oily pork in the Atlanta market prior to September, 1917, was sold by the brokers representing the Moultrie Packing Company and the Andalusia Packing Company; that the White Provision Company never made a specialty of soft and oily pork; that the list of concerns named by him engaged in Atlanta in the wholesale meat business back in 1917 are handling western pork.

That he has been in the meat business about twelve years; that prior to December 1915 he worked for the National

Packing Company until it was taken over by Swift & Company; then he worked for Swift & Company; that he was with the Atlanta house of the National Packing Company when it was dissolved in 1912 and remained with Swift & Company until December 1915.

That to the best of his knowledge Swift & Company was handling soft and oily pork down to the present time; that there was never very much of that oily pork sold in the Summer time, and that he thought they were not selling very much of it now; there was no demand for it, that is,
1127 in June. That he thought they were selling less of it in June this year than in June last year, because competition was keener now than it was a year ago, and also that on fresh pork the trade was getting away from the soft and oily pork; that the trade didn't seem to like Georgia pork; that he observed that a lot of people who did handle it were getting away from it; that the reason the trade was getting away from it was not due to the fact that it had not been pushed by the people who were selling it at wholesale on the Atlanta market or that those people had been endeavoring to sell it on other markets instead of there. That he had a chance to buy pork last Winter when pork was scarce, at 8c a pound under the market; that he went and looked at them and found they were Armour's Jacksonville pork loins; that he added, he thought, about a cent a pound and endeavored to sell those loins to one of the largest concerns in Atlanta and the buyer said he would not have them at any price; that he tried to sell them at other markets and could not. That he had a Georgia account offered to him at one time but did not take it as he never considered it a very good money maker and never felt that he wanted to fool with
1128 that stuff. That he knew in a general way the amount of pork sold in this market by the Tifton Packing Company by Mr. Stanaland; that Stanaland used to have about two cars of pork a week, that is, of mixed packing house products, pork, hams, lard, all that kind of stuff; that it would not average two cars per week throughout the year, as it would not run that much in the Summer. Stanaland did very little business in the Summer months. Stanaland's place of business was right across the railroad from the witness' and he remembered his fresh meat cars used to come in twice a week; that Stanaland was not equipped to handle very much more than that; that Stanaland had a little mule and wagon and that was about the only way he had of de-

livering that stuff so that one could not sell much more than that with the outfit that Stanaland had. That he thought Stanaland's business ran about the same when he handled the Moultrie account, the Tifton account and the Macon account—that there was no special difference in any of them.

Redirect Examination.

That if he was running one of the packing houses, killing hogs, as shown by map marked B-1 for identification, in the States of Georgia, South Carolina, Florida or Alabama, he would not try to market the product on the Atlanta market because he considered Atlanta the keenest competitive
1129 point in the country. That from say 1915 on, during the period of the war, because western stuff was scarce, people would take almost anything they could bring in. Conditions are now altogether different. All the packers seem to have plenty of stuff. Trade is inclined to pay the difference in price and get meat now. That was his experience. That he thought that if those plants could be operated successfully they would be in here now with products trying to sell them. That he was endeavoring to build up as much trade as he could and sell all the goods he could, and that it made no difference to him whether it was Western pork or Southern pork, if there was a profit in it and if he thought he could handle a Southern account profitably he would have done so.

That the following concerns are now engaged in business on this market:

Power Packing Company, Nashville, Tenn.
Arnold Brothers, Chicago.
Vissman Packing Company, Louisville.
Jacob Dold Packing Company, Wichita, Kans.
Newhoff Packing Company, Nashville, Tenn.
Greenwald Packing Company, Baltimore.

That Kingan & Company, he thought, were represented on this market in 1916 or 1917; that he also thought they did not handle fresh meat at that time, but do handle it now.
1130 Witness was shown Respondent's Exhibit B-1 for identification and said that in addition to the towns already named, there were packing houses at the following points:

Waycross, Georgia.
Memphis, Tenn.

1131 L. W. BROWN was called as a witness in behalf of Respondent, and after being first duly sworn, testified in substance as follows: (pp. 2266-2302.)

That he lived in Atlanta and was engaged in the meat business; had been in that business for twenty years and started in Atlanta; had been here all that time with the exception of about eighteen months. In 1914 he was manager for S. & S. Company. The latter part of the year 1914 he went with the Cudahy Packing Company as manager of its Savannah Branch, for a year and a half. That he came back to Atlanta in July 1917 as manager of the local branch of Cudahy Packing Company; that he held this position until March 10, 1920, when he opened a branch for the Evansville Packing Company, and is now manager of that branch. That it was part of his duties to be familiar with the conditions pertaining to the wholesale meat trade in Atlanta.

Witness gave the names of concerns selling meat at wholesale in the Atlanta market and mentioned, in addition to those mentioned by previous witnesses, the following:

Morris & Company
Armour & Company
Bettis, a local slaughterer
S. Saunders Packing Company of New York
Atlanta Butcher's Abattoir Company, a local slaughterer.

In July 1917, in familiarizing himself with trade conditions, it was part of his duties to know what the various markets were buying, whether they handled hard Western hogs or Southern hogs. That from his experience, he would
1132 say ten per cent of the customers of the Cudahy Packing Company handled Southern hogs; that of this ten per cent, quite a few of them handled it spasmodically—they would handle it this week, possibly cut it out for two or three weeks and maybe they would go back to it later. That the Southern pork is inferior to Western pork, and after handling it regularly for a week or a couple of weeks, customers would begin to lose their trade and would have to get on Western pork to get them back. At least one half of the ten per cent above referred to were working under conditions like that. That he found the Southern pork was handled by the cheaper class of markets; the better class of markets handled very little of it. That markets located in the negro sections of the town and the cheap white sections handled

more of it than the better class of markets, also the cut price markets, those fellows that cater to a cheap class of trade. That there is a class of market which tries to draw its trade by advertising, has no regular clientel, but endeavors to induce Tom, Dick and Harry in different sections of the city to buy there. This class of market invariably handles Southern pork. These markets have no regular line of customers.

That he would classify the markets located in what was known as the colored section of the city into two or three classes. There were classes of the colored people who demanded the best, and there were classes that would take nearly anything; just a few; they go for quantity, not quality.

The ones that demanded good stuff would buy Western
1133 pork, and the ones that demanded quantity rather than quality invariably bought Southern pork; that applies on smoked meats as well as fresh meats, applies on salt meats all the way through—on beef also.

Q. How did the people who were selling Southern pork affect your business—I mean the business of the Cudahy Packing Co.?

A. Well they hurt it by—to the extent of our having to reduce prices on Western pork to compete with it, or let them take the business; that is the effect that it had, that is, such customers as are using the Southern pork.

Q. Do you mean by that it was a question of price not of quality?

A. Yes.

(By Mr. Taylor) Q. When was this you were speaking about Mr. Brown?

A. Well that condition has existed more or less all the way through at the present time.

Q. You are not with the Cudahy Packing Co. now are you?

A. No sir, I am not.

Q. When were you talking about, back in 1917 when you were with them?

A. Well when I was with the Cudahy Packing Co. and when I was with Wilson and when I went there with the Evansville Packing Co., conditions there are practically the same, there has been little change in that respect.

1134 Q. (By Mr. Horton.) Is it correct to say or not that the meat products sell on quality?

A. Absolutely.

Q. Isn't it correct to say that if you reduced your price

low enough you can take all the business in this market if you have the goods?

A. Yes sir. Absolutely. I would not say all. There is some of them that would not have the cheap grades.

Q. Well take the larger majority of it?

A. Yes, sir, take the majority of them, prices would influence business.

Q. You would have to take a big loss to do so, though?

A. Oh yes, yes sir.

Q. Now does the Southern pork sell for more or less than the Western pork?

A. Well it invariably sells for less; I suppose there are some few markets that mix it up and get the same price for the Southern pork as they would the Western, when they handle both and mix it together, but as a rule Southern pork does not bring as much as the Western.

Q. Do you mean by that retail markets?

A. Yes, retail or wholesale. Wholesalers cannot get as much for it as they get for Western pork.

Q. An experienced meat man can tell the difference can he not.

A. Yes, sir, doesn't have to have very much experience.

1135 Q. No chance to deceive anybody?

A. Absolutely none, with any one that has any knowledge at all of meat.

There are more competitors in this market now than there were in 1917. Competition now is decidedly keener. There are a larger number of competitors represented. There are people here now that were not here two, three or four years ago. In 1917 and 1918 the purchasing power of the consumer was decidedly greater than it is at this time, is greater, in his opinion, that it has ever been in the history of the country. That the prosperity brought on by the high price of cotton in the South was one thing, the conditions brought on by the war. The camps (army camps) were located all over the South; money that was being spent down here by the government, billions of dollars turned loose here from sources during those years that we never had before or since. Cotton was then worth forty cents; at the present time it is worth about ten cents. That the effect of the high prices for cotton upon the hog industry was that it had a tendency to lessen hog production because they all turned to cotton planting and stopped raising hogs, and stopped raising corn, too.

1136 MR. BROWN upon cross examination testified in substance as follows:

Q. And the same is true of the Andalusia plant, is it not?
A. Yes.
Q. Now, I understood you said that when you were representing the Cudahy Packing Company, you found that the western—soft local pork being offered on the market at less than western pork, and it was necessary to reduce the price of the western pork or lose the business to the southern pork?
A. That is correct.
Q. That was the experience you had as manager of Cudahy Packing Company?
A. Yes sir.
Q. Do you think that the managers of the other large packers here had the same experience?
A. I think so; they were all working under similar conditions.
Q. That is they were all selling western pork and found the southern pork a very troublesome factor?
A. Yes sir.
Q. Do you think Swift & Company found the same thing?
A. Yes, I think they did, because it has to be sold under the western.
Q. The fact that Swift & Company bought out the Moultrie and Andalusia plants rather confirms your opinion in that, doesn't it?
1137 A. Well, I don't know that it does.
Q. Well, they got out of the way two very large factors selling soft pork by doing it, did they not, Stanolin and Miller?
A. Well, they are handling it themselves.
Q. Swift have been handling it from the time they bought
A. Yes, I guess as far as those two concerns are conout the Moultrie and Andalusia plants and eliminated Stanolin and Miller from the market?
cerned, they was eliminated.

That he had never sold any southern pork and that his whole argument with his customers has been that it was inferior to Western.

1138 Atlanta, Georgia.
June 25, 1921.
10:00 o'clock A. M.

R. E. BARON, called as witness on behalf of Respondent, testified in substance as follows: (pp. 2303-2347)

Direct Examination

He lives in Atlanta and has been in the meat business for five years. That he is connected with the C. J. Kamper Grocery Company, as manager of the meat department, which said department is strictly retail. Kampers is one of the largest stores in Atlanta; that he was manager of the meat department for two years and two months. Before that, for a year and eight months, he worked with Mr. Cherry who was in the retail meat business; before that he was with the Central Meat Market on Alabama Street, in the capacity of a meat cutter; before that he was employed by the United States Government in the Secret Service Department.

Kamper Grocery Company does not handle any peanut-fed or Southern pork in any way, shape or form, the reason is their trade does not want it and they cannot dispose of it. That he had experience in using Southern pork in sausage; that one can never get sausage that will be hard or will keep good by using Southern pork. That when it
1139 comes to keeping qualities, the Southern pork will not keep at all in comparison to western pork. The Southern pork is so oily—it is always wet, and that oil is damp, and if it is taken out of the coolers for any length of time at all, a sort of scum forms on it. That all of the wholesale meat dealers solicited his business—every one of them; that most of his pork was bought from Arnold Packing Company who were located in Minnesota.

1140 T. D. BODY was called as a witness on behalf of Respondent, and after being first duly sworn, testified in substance as follows: (pp. 2348-2426; 2449-2483; 2508-2527)

That he was in the meat business; that he has been district manager for the Cudahy Packing Company for the past eight

years with headquarters at Atlanta. Before that he was district auditor for the same company for about ten years; that the following branch houses of Cudahy Packing Company are under his jurisdiction:

Atlanta, Birmingham, Chattanooga, Greenville, Jacksonville, Macon, Montgomery, Savannah, Tampa, and brokerage arrangements at Augusta and Rome.

That it is a part of his duties to keep posted on trade conditions in his district—what other people are offering to the trade and how it compares with what his company offers; that he knows competitors are numerous and competition extremely keen.

Witness then proceeds to name the concerns engaged in the wholesale meat business in Atlanta, which corresponds in substance with those named by previous witnesses.

Witness is then shown a map marked Respondent's Exhibit B-1 for identification, and names the cities where, to his own personal knowledge, packing houses are located. The
1141 cities he named correspond in substance with those named by previous witnesses.

That he visited the Macon Packing Company when the plant was being built and from time to time thereafter, up to about the time it was closed down; that he knows why the Macon plant was closed down; that it was because it was unable to operate profitably.

That the Waycross Packing plant was operating for two or three years after it was constructed; that he was at the plant about two years ago, after it was closed; that he was told in Waycross by local customers of the plant that the plant was unable to operate profitably.

That he visited the Statesboro Packing plant after it was closed; that it has not operated for the past two or three years; that on one of his visits to the Statesboro plant he was shown over the plant by one of the officers of the Company that built it, the officer in question was Mr. Brook Simmons; that he visited the plant at the invitation of the officers and was urged by the said officers to arrange for his company to operate the plant; that the said officers told him they had started out with a strong effort to operate the house properly and profitably, but found it impossible and had shut it down; that his company had been invited to operate
1142 several Southern packing houses, amongst them the Statesboro and Waycross plants. Witness was instructed by Mr. Cudahy to visit these plants at some time convenient for him on one of his regular trips in the district,

and report on what he saw; that afterwards, while he was in Chicago and talked the matter over with Mr. Cudahy, Mr. Cudahy told him he was not interested in Southern plants at this time. That he doubted if the supply of hogs would be sufficient to keep these plants in operation, and largely because the quality of the hogs continued to run soft, it was regarded as objectionable; that his recommendation was made about two years ago.

Witness visited the Moultrie plant about 1919—after Swift & Company had bought it. That there was very extensive additions being made to the house; they were building an immense freezer, adding to the cooling space, cooling floors, building stock yards and generally enlarging the whole capacity of the house. That he particularly noticed the freezer because while at Statesboro he had commented on the absence of a freezer at that plant, and told the Statesboro people that if they were going to successfully operate the house they would have to have a freezer there; the product being soft, it would have to be frozen to a certain extent before they could send it to market if they hoped to do anything with it.

1143 That he has been in the meat business for twenty-five years, and his experience covered chiefly branch houses; that he had occasion to observe marketing methods practically all that time, and had occasion to be interested in the production of live stock to quite an extent—and in live stock growing; that handling pork products in a more or less intimate way during that time caused him to be interested in the production of that pork, and to observe the necessity of the production of a firm fed hog in order to be handled successfully; that he has visited farms in the South and talked to the hog raisers, and also in Nebraska; that he has talked to the State veterinarian at the State House, the herdsmen out in the country, and the owners of the droves, and has found the soft fed hogs, being so much cheaper to raise, are largely in favor to the Southern farmers. The Southern farmers feed them on peanuts and get them as fat as with corn, but it is difficult to tell the difference between a corn fed hog and a soft fed hog when the hog is alive; that the cost of the feed is more in the North than in the South; in this section they turn the hogs into a field of peanuts and that there was practically no expense in gathering the crop—the hogs go in and feed themselves; that it costs more to produce a hog when it is corn fed; that from statistics he has obtained from the

1144 government and the state, based upon information he has, there are less hogs being produced in the South now

than there were in 1917 and 1918; that during 1917 and 1918 a great deal of product was going abroad—prices for pork and provisions generally were high. At that time Southern hogs were selling correspondingly high, and since that time cotton has recovered a good deal and there has been much less activity in raising live stock; that a great many farmers or planters have gone to raising cotton and are taking much less interest in raising live stock; that along in 1917 and 1918 there was a brisk demand and considerable more product moving than there is at the present time, and prices were higher. That a certain amount of soft product would move then, on the price proposition entirely, but that at the present time there are more competitors here and considerably more packing house products of all sorts available, and prices are now considerably lower throughout the list. The trade is more particular now, and is able to get supplies of Northern firm fed pork. That in his opinion the demand for Southern pork or soft pork was diminishing; the percentage of dealers that would buy Southern pork was considerably more in 1917 and 1918 than at the present time—at the present time there seems to be very little demand for it.

1145 *Redirect Examination.*

That competition was very keen amongst wholesale meat dealers in Atlanta; that his company had extremely keen competition at every point where they were located in the South.

1146 BYRON C. KISTNER, called as witness on behalf of Respondent, after being first duly sworn, testified in substance as follows: (pp. 2426-2448)

That he lives in Atlanta and runs a retail meat market; has been in the retail meat business about ten years; that, as markets go, his market is considered a large one. That he is the President of the Atlanta Retail Food Dealers Association and has been since the first of the year; before that he was Vice-President and on the Board of Directors for two and a half years. That his market handles a full line of meat, but does not handle any Southern hogs or cuts from Southern hogs except where he could not get Western; that he prefers to handle Western hogs because the trade demands them; that he would not handle Southern pork loins or smoked

meats at a cheaper price if he could get the Western product; that he is a citizen of Georgia and has the State's interest at heart, but as a commercial proposition he would handle the Western pork.

Mr. Kistner, upon cross-examination testified in substance as follows:

That he did an annual busines of $200,000.00 a year; that 33-1/3 per cent of this was on pork products or about $66,-
000.00; that about half of his pork products was fresh
1147 pork or about $30,000.00, and the balance smoked and
salt meats; that he sells to "A" class customers that want good stuff and that are willing to pay a good price for it; that his market is located in a good section of the city.

That he has bought soft pork at different times, occasionally, when he could not get Western pork; that soft pork has been sent him occasionally and he has had to return it; that it has been fully a year since he purchased soft pork; that he has never bought as much as 500 or 1,000 lbs. of soft pork at one time; that he might have bought 200 lbs. soft pork loins at different times, possibly soft pork hams, and 100 lbs. soft pork tenderloins in years back. That he has never purchased any soft smoked pork which would include hams and bacon; that in 1917 he purchased fresh pork from M. M. Stanaland who was representing the Moultrie Packing Company at that time; that he could not say how much he bought, but that he supposed he bought some occasionally, off and on, might probably be more frequently than once a month, that he could not say it was once a week; that he never purchased any hams or bacon from Stanaland; that he has no idea as
to how much fresh pork he purchased from Stanaland
1148 in 1917.

Upon redirect examination, Mr. Kistner testified in substance as follows:

That he could not tell what the occasion was when he bought pork from Stanaland but he would judge that it was because he could not get suitable Western pork, and that he would judge fresh Western pork was scarce; that he would have used Western if he could have obtained suitable Western pork; that he could not use frozen Western pork; that he has never seen Southern pork that was equal to Western pork but possibly he could only get Western pork loins that weigh 18 lbs. and were frozen, so he would then prefer Southern fresh loins that weight about 8 lbs. to the 18 lbs. frozen loins; that he preferred fresh to frozen pork at all times.

1149 W. O. PEAVY was called as witness in behalf of Respondent, and after being first duly sworn, testified in substance as follows: (pp. 2484-2489)

That he is not in the meat business for himself now; that for twenty-seven years he was a partner of Scott & Peavy, which handled fresh meat; that that firm quit business in March, 1920. That he is now manager of the meat department of the firm of Kinne & Boswell. That he did the buying for the firm of Scott & Peavy for twenty-seven years and bought the best he could get on the market; that he bought Western meat entirely, and that he would not have the peanut fed pork if he could get any other kind; that he did not want it at any price. That the same thing applies to the market he is now working for.

1150 F. B. RANDALL, called as witness on behalf of Respondent, after being first duly sworn, testified in substance as follows: (pp. 2490-2505)

That he lived in Atlanta and was district manager for Morris & Company; that he held that position since December 4, 1919; that he has been in the packing house business approximately ten years. That the Atlanta house of Morris & Company occasionally gets in a shipment of dry salt meats made from soft and oily pork; that his experience in handling soft pork has been very unsatisfactory because they were forced to stand a tremendous shrinkage of them, causing his firm to lose money on all shipments handled.

That the branches of Morris & Company under his jurisdiction are as follows:

Chattanooga
Atlanta
Augusta
Savannah
Macon
Cordele
Columbus
Jacksonville
Tampa
Pensacola
Mobile

New Orleans
Montgomery
Birmingham

That it was part of his duties to keep posted on trade
1151 conditions in this particular territory; that, in his opinion, not over five per cent of the Atlanta customers of Morris & Company handle soft pork.

Witness names companies engaged in the wholesale meat business in Atlanta, which is substantially the same as that given by previous witnesses.

That he found competition here in Atlanta very keen, and it was a puzzle for them to get business and meet competitive prices. The same condition exists at all other points in his territory.

Cross-Examination.

That Morris & Company sells to approximately 500 retailers in Atlanta and that approximately five per cent of these dealers plus 25 handled soft pork from 1919 to present time.

1152 W. A. PERKINS was called as a witness on behalf of Respondent, and after being first duly sworn, testified in substance as follows: (pp. 2527-2585)

That he lived in Atlanta and was engaged in business as a broker, handling provisions; that he represented the Jacob Dold Packing Company, the East Side Packing Company and C. F. Vissman & Company.

That the Dold plants are located at Buffalo, New York, Wichita, Kansas and Omaha, Nebraska; that he sold the full line for the Dold Company, including fresh pork, smoked meats, dry salt meats, pure lard, and fresh meats except beef.

That the East Side Packing Company is located at East St. Louis, Illinois; that for the said company he sold cured meats, smoked meats, lard, pork cuts of all kinds, and some beef, also fresh pork, including loins.

That the C. F. Vissman Packing Company is located at Louisville, Kentucky; that for that company he sold cured meats, fresh meats and some beef and lard.

That he would say he sold the full line for the Vissman Packing Company and the East Side Packing Company, and the full line for the Jacob Dold Packing Company with the

exception of beef; that he has been representing the
1153 firms above named for over a year; that prior to that time he represented the T. M. Sinclair Company of Cedar Rapids, Iowa, and the plant at Statesboro, the Bullock Packing Company; that he represented the Sinclair Company from April 1916 until May 1917; that he represented the Bullock Packing Company from October 1917 until May 1918. That the product from the Statesboro plant was what is known as soft and oily pork; that there is a difference in quality as well as price; that the soft and oily pork sold from two to three cents under the price for Western and Northern pork.

That at the present time competition is very keen on the Atlanta market, both from the branch houses located here and the peddler cars coming into the market.

Witness then named the wholesale dealers doing business in the Atlanta market which is substantially the same as that given by previous witnesses.

That in 1916 he was handling provisions on this market and competition then on provisions was about the same as it is now; that he found competition very keen in the fall and winter of 1917 and the spring of 1918; that he was out of business from 1918 up until 1919; that at all times he has been in this market, he has found competition very keen; that
1154 the number of wholesale dealers doing business on this market has increased.

That when he was representing the Bullock Packing Company in 1917 and 1918, he was selling soft and oily pork; that at the time he came in competition with Swift & Company they were selling the same article; that as he went around amongst his trade he found Swift & Company were selling goods of the same nature to the trade; that he had an opportunity to judge whether or not Swift & Company was making a wholehearted effort to sell this soft and oily product; that he found they were working the trade with their salesmen and quoting prices in line with those made by other people in those things; that they seemed to be working the trade just as they did on their other stuff, and their stock seemed to be plentiful at all times. That he stopped representing the Bullock Packing Company because that firm discontinued business, and that he understood their business was not profitable.

Cross-Examination.

That he was employed by Swift & Company from 1908 to 1916 with the exception of a short time when he was with the National Packing Company; that when he first came to Atlanta in April, 1916, he became a broker for the Sin-
1155 clair Packing Company and at that time the Moultrie Packing Company was selling products in Atlanta through M. M. Stanaland and the Andalusia Packing Company through the J. W. Clark Company; that he was not handling fresh pork for Sinclair, only provisions.

That he first began to sell southern products when he took on the account of the Bullock Packing Company in October, 1917; that these products included fresh cuts, green hams, shoulders, loins and some little stuff; that in November and December 1917, and in January, 1918 he sold some soft cured meats and lard; that his average sales were about 12,000 lbs. a week; that he found as a result of his visits to the trade from day to day and the reports that were made to him by his salesmen that there was quite a good deal of Moultrie pork in the Atlanta market, but not as much Andalusia pork as Moultrie in the fall and winter of 1917-18.

That the Bullock Packing Company did not kill very much stuff; that he did not push the sale of products of the Bullock Packing Company because he had other lines that were more profitable; that Mr. Miller of the J. W. Clark Company handled some soft pork accounts including the Chipley
1156 Packing Company and the Stanaland account for the Macon Packing Company.

At the present time Swift & Company and Armour & Company are handling soft meat products in Atlanta.

Counsel for the Commission asked the following question: "I say you are not very much troubled with competition with soft meat?", to which witness replied: "Well, there is not as much of it as there once was of course." Question was then asked by counsel for the respondent: "Why is that, Mr. Perkins?" Answer: "Well, I figure it is because the dealers here realize that they cannot make as much money on it; it is not satisfactory—that is due to the quality of the meat."

Redirect Examination.

That from the standpoint of a broker doing business on the Atlanta market, he considers it more desirable to represent a packer who has Western meats to offer; that he does not

consider the account of a packing house handling soft and oily hogs is desirable, because there is more product returned, more short weights, it costs more to handle it, and the demand from the trade for this class of product is lessening.

1157 That in 1917 and 1918 business was considerably better than it is now, and product was not as plentiful; that in 1916 and 1917 the demand for all kinds of pork products was greater than it is now—there then were a demand for soft and oily pork; that the demand for soft and oily pork has been constantly lessening, in his opinion, based upon his knowledge of the trade conditions in Atlanta.

Recross Examination.

That his statement that the demand for soft products is less now than in 1917 is based on the fact that there are fewer people now buying and using soft pork than there were in 1917.

That he thinks there are fewer people buying and using soft pork this year than there were last year, and that there were fewer people buying and using soft pork last year than there were the year before; that there were fewer people buying and using soft pork in the year 1919 than there were in the year 1918, and that there were fewer people buying and using soft pork in the fall of 1918 than there were in the fall of 1917.

1158 *Redirect Examination.*

That he believed that the experience dealers have had with the southern stuff is the cause of the diminishing of the demand; that their experience has been unfavorable; that his experience in handling soft and oily pork was that it would not keep as long; that they had more trouble in keeping it and that it was almost impossible to freeze it and keep it that way; that the shrinkage was very great on it, both from the butcher's standpoint and the retailer's.

1159 E. B. ADAMS, called as witness in behalf of Respondent, after being first duly sworn, testified in substance as follows: (pp. 2585-2605; 2654-2717)

That since April 15 of this year he has lived in Atlanta and is now district manager of Swift & Company, in charge of

what is known as Atlanta territory; that houses under his jurisdiction are:

Atlanta
Chattanooga
Knoxville
Nashville
Columbus
Waycross
Macon
Augusta
Savannah
Jacksonville
Florida
Tampa
Miami

That he has been in charge of this territory since April 15 of this year, and previous to April 15 was in charge of what is known as Birmingham territory, with the following towns under his jurisdiction:

Birmingham
Gadsden
Huntsville
Albany
Sheffield
Memphis
Greenville
Greenwood
Tupelo
Tuscaloosa
Montgomery
Anniston

1160 That he was in charge of the Birmingham territory for nine years and eleven months; that his principal duty as district manager is to sell the products; that he is what might be termed a district sales manager; that the managers located at the several branch houses are under his jurisdiction.

That the business of Swift & Company is the meat business; they are called packers and handle the full packing house line. That the following dealers were in the wholesale meat business in Birmingham:

Armour & Company
Geo. Hormell
Morris & Company
Cudahy Packing Company

Wilson & Company
Evansville Packing Company
Birmingham Packing Company
Alabama Packing Company
Independent Packing Company
Newhoff Packing Company of Nashville
Krey Packing Company
East Side Packing Company of St. Louis
Kingan & Company
Cincinnati Abattoir Company
Corn Belt Packing Company of Dubuque, Ia.

That the following concerns have been engaged in business in Birmingham prior to 1911 and sell the full line of cured and fresh meats:

Swift & Company
Armour & Company
Cudahy Packing Company
Wilson & Company and their predecessors the S. & S. Company.

1161 Birmingham Packing Company (a killing plant under Government inspection) with a downtown branch house for a distributing point.

That the following concerns were in business for the time indicated:

Inman & Company. Previous—four years.

Evansville Packing Co. Sell the full line.

Independent Packing Co. of St. Louis. In and out of the market for a number of years. They ship in in car routes and are quite a factor in the Birmingham market on fresh pork.

Hoffman Packing Company of Cincinnati. Ship in car lines, also are in and out of the market.

Hormell Packing Company. Has a branch house here.

Kingan & Company. In and out of the market for the past ten years—ship in car routes.

Decker Packing Company of Mason City, Iowa. Ships in in car routes.

Cincinnati Abattoir Co. Has been coming into Birmingham since 1920. They ship in car routes.

Newhoff Packing Company. Were shipping into that market last year.

Alabama Packing Company. A local plant was built in 1913 but never operated on a very large scale.

Cox & Gordon. Were packers represented in Birmingham by a broker, shipping in cars, what is known as a car

line or car route. Have been there over two years and probably considerably prior to that time.

1162 Guggenheim Packing Company. Are in that market. They ship car lines into Birmingham.

That Swift & Company employed a crew of salesmen and went out soliciting business from the dealers; that the competitors did the same, and all went after business; that it was his duty to visit each point about once a month and he approximately did so; that he was familiar with the territory under his jurisdiction; that in making his rounds and coming to a point where they were not getting a fair amount of business on a particular item, he would investigate and try to find out the trouble and the remedy; that it was his duty to have the salesmen sell the goods and he endeavored to do that duty or find out why; that he was in touch with general conditions and was fairly close to the market conditions at each point in the territory; that there are other dealers selling meat at these same points and he has plenty of competition, that is, where there is business there is competition in the meat line. That has been his experience, any number of them. That he has a good knowledge of competitive conditions at these several points; that he has found where there was one buyer there was some eight or ten different dealers going after the order and soliciting the business from

1163 the retail dealer; that this applied to all points in his territory. That since 1917, branch houses in his territory have handled soft and oily pork—not all of them—but where the freight rate was logical, they would handle the Andalusia pork products which come from the packing plant at Andalusia. That with regard to the facts as to whether an effort was made to sell Andalusia products in that territory, he would say it seemed to him every few days they could get a wire from Andalusia that they needed orders for some certain product, one or several, and it was his duty to take up with the managers and solicit orders for the Andalusia plant, and it was quite an effort to get orders. In other words, sometimes he had to demand that the branch house managers give Andalusia orders, and that he made such demands; that he encouraged the sale of the Andalusia products just about as forcibly as he could. Naturally the Andalusia pork did not move very good or they would not have had this big effort to try to get the managers to take it; that Swift & Company put those managers in charge of the branches and told them to do business and make money,

and if they could sell Andalusia pork readily and make money on it they would not have to ask them to take it.
1164 They would insist on getting it. As a rule, the Andalusia pork was unsatisfactory, particularly shipping cured meats. The Andalusia plant manager and provisions man were constantly visiting the various branches and quite frequently asked him to go with them to these houses and hold meetings, with a view of creating a better outlet for their production. By outlet he meant orders for car shipments—shipments from Andalusia to these various branch houses.

That they did sell a fair amount of the Andalusia product; that it was up to his territory and the New Orleans territory to use the production of the Andalusia plant, and they had to take their portion of it, whether the managers wanted it or not; that the territories referred to were called upon to use the Andalusia product; that the steps taken by him to make the managers move the product were—if the matter was urgent, to wire the several branch houses that Andalusia had to have an order for so many cattle or so much pork for shipment that day, and if the matter was not immediately urgent he would write a letter requesting the managers to order certain product from Andalusia; that he insisted on these houses taking Andalusia product; that the directors of Swift & Company put it up to the district managers, and they had to take their proportion of the Andalusia produc-
1165 tion; that it was not a question of argument, it was their duty; in other words, they had to do it.

That since he has been manager of the Atlanta territory the situation with respect to Moultrie was similar to Andalusia; that it was up to the Atlanta territory to give the Moultrie plant an outlet for their production; that the managers were forced to send their orders to Moultrie just the same as they would to any other plant; that if they failed to do this, it is up to him to insist on their giving those orders; that he used the same method over here (Atlanta) that he did over there (Birmingham), and handled it by calling on the phone or wiring or by mail, and if it was urgent and quick action was necessary, he phoned and said he had to have an order for a certain kind of product in certain quantities. That the managers were put in the branch houses to do business, and if they could sell the soft stuff they would not hesitate to order it; that their experience with it is that it has been unprofitable; they have trouble with the trade; the product is returned to them quite frequently, and they

lose money on it; have excessive shrinkages on it; it don't hold up as readily as the Western pork, and it is un-
1166 profitable from a branch house standpoint.

That for the purpose of selling more of the soft and oily products from the Southern plants, they have held numerous meetings of plant managers and the sales organizations, they have even visited one after another of the branch houses with the representatives of the Andalusia plant with a view of creating more interest in the sale of the Andalusia product. That just two weeks ago he made a trip over to Florida, held salesmen's meetings at each point, largely to sell Andalusia pork; that Andalusia products were about the only thing discussed; that the purpose of the meeting was to give Andalusia and Moultrie an outlet for some product they wanted to move immediately.

Recross Examination.

That it was a very common thing for the salesmen to complain that competitors had a lower price; that those complaints came in every day; that they usually came from the salesmen as an alibi as to why they had not done more business; that complaints were not applied to any one competitor; they applied to all competitors, large and small; that also they did not apply to any particular product, but to various products.

1167 *Redirect Examination.*

That he would say Atlanta was a very heavy pork consuming market—above the average; that Atlanta is the principal city in the territory known as the Southeastern states; Birmingham is next.

That a good many of his salesmen this year (1921) were showing a decrease in their volume in comparison with last year of maybe thirty per cent; that he attributed this to increased competition and possibly lighter consumption.

1168 MR. W. H. WHITE was called as a witness on behalf of Respondent; and after being first duly sworn, testified in substance as follows: pp. 2606-1649

Direct Examination.

That he has lived in Atlanta for the past forty-five years; is engaged in the packing business and is the President and General Manager of the White Provision Company, local packers:

Q. What is the character of the pork products that you manufacture from the hogs that you obtain in Georgia? Are they firm products or otherwise?

A. The majority of the pork that comes from the Georgia hogs is soft pork.

Q. Well, now in your opinion first from you experience in the business, can you state as to what proportions were soft and oily and what proportions were firm of the Georgia hogs?

A. My opinion of the percentage of the hogs originating in Georgia will run from 85 to 95%.

Q. 85 to 95 per cent what?

A. Soft or oily.

Q. (Mr. Taylor): When—what year is this you are talking about?

A. I am talking about the present time or any time within recent years: 85 per cent may strike it right for the
1169 present time, and back a few years 95% would be better.

Q. (By Mr. Horton): What would it be in 1916?

A. Be nearer 95 than 85%.

That the quality of the soft and oily pork is undesirable to the man handling the pork, and it has to be sold to a class of trade that is more or less indifferent as to the quality, merchantable quality; that it is wholesome and sweet and good, but is not as merchantable as firm pork, and is very undesirable, especially to trade catering to the better class; that it cannot be sold as readily as Western pork, and in most cases is sold at a very great reduction in price; that in some cases the trade won't have the soft pork at any price; and where it is a trading proposition with a man a price will have to be made two or three cents under firm pork, that is especially true if it is oily. That competition in the sale of pork products was very close and keen; that every firm sell-

ing pork in Atlanta was out for what business they could get; that you have got to sell the product that is desirable and deliver it to them with good service in order to get business at all; that competition is just as keen in beef and provisions as it is in pork.

That salesmen for his company in a general way in calling on the trade come in contact with the salesmen for Swift & Company; that he has never had his attention called to any unfair practices of Swift & Company.

1170 *Cross-Examination.*

That his concern employs about ten salesmen, six of whom call on the Atlanta trade and four outside of the city. That aside from his Company, Swift & Company and Armour & Company he does not think anyone else is selling soft pork in the Atlanta market.

That the things he testified to in regard to competition were obtained in his general contact with the conditions; that he does not canvass the trade and call upon the retail dealers as a salesmen although he does sell some products such as hides and tankage.

That he began in the meat business when he was about 20 years of age and has been in the meat business ever since. That he began selling goods in Atlanta on a commission basis for Armour & Company and continued with them for about a year, and then got a position with Nelson Morris in Atlanta, selling their full line of products. That he continued with Nelson Morris for about two years and then got a position with Swift & Company in the capacity of city salesman. He continued as city salesman for about a year and a half in Atlanta; then in 1899 he was sent to Jacksonville, Florida, as manager of their branch house, where he remained until September 1900, when he became Southern District Manager for Swift & Company with headquarters at Atlanta, and that he remained in that capacity with
1171 Swift & Company until the fall of 1906 when he organized the White McLendon Company, which later became the White Provision Company. At first from 1906 to 1909 or 1910 the White McLendon Company acted as jobbers and wholesalers of fresh meat and provisions; in 1908 the name was changed from the White McLendon Company to the White Provision Company, and in 1910 the present packing plant was built. That the White Provision Company first began to slaughter in March, 1910; that at that time it de-

pended almost entirely upon Tennessee as the place from which to get its hogs; that at that time there were no Georgia hogs on the market in this territory; that from the very first his Company tried to encourage the farmers to raise hogs, and began shortly to get a few hogs from year to year in slightly increasing numbers in the early years, but they then began to get a little more, particularly after they began to get a market for those hogs; that it is a fair statement to say that it was not until the year 1914 before there were Georgia hogs in numbers of any consequence; that in the early years hogs were regular in size and there were not many packing hogs coming in from Georgia; that the Georgia hogs were sold principally as that product known as butcher pigs—that means the hog was simply dressed and delivered whole to the butcher—fully dressed, without having been cut—the whole carcass, head, feet and all; that it might be stated very emphatically that there was no demand
1172 for soft products; the demand was for hogs; that they encouraged the farmer and paid all they could to get them when they did come to the market, and assumed the burden of marketing that pork; that they had to make the demand; that his company have never yet received an order for Georgia hogs nor an order for pieces of Georgia pork during the time it has been in business; that there was not any demand; that nobody ever came in and wanted to buy soft hog; that in order to sell it they had to get out and push it; that it was a selling proposition; that there never has been any demand made to their company for soft and oily pork; that it has sold lots of it, but it was a question of selling and not filling orders specifically for soft pork.

1173 R. A. HILL was called as witness on behalf of Respondent, and after being first duly sworn, testified in substance as follows: pp. 2718-2767

Direct Examination.

That he lived in Atlanta and was manager of the local branch house of Swift & Company since October 13, 1919; that prior to that time he was assistant manager and salesman for Swift & Company since February 1, 1917; that a branch house is a distributing point for Swift & Company's products; that the animals are slaughtered at the various plants and the product shipped in refrigerator cars to the

branches; that products are all perishable and come under refrigeration; that the Atlanta branch house handles the full packing house line; that it has four trucks, three wagons and eight Ford runabouts, the latter used by the salesmen in working their trade. That since around the first of the year of 1919 there have been ten salesmen; that when he first came to Atlanta the same branch had nine salesmen; the latter part of 1917 they had fourteen or fifteen; that the extra salesmen were used in working the war camps in and around Atlanta; that the Atlanta branch house sold to those camps, and had four or five men working that trade; that the product was carried in the coolers and delivered to the retailers as they called for it or as they buy it. If a customer wants one pork loin, he get one pork loin; if he wants five
1174 pounds of spare ribs, he gets five pounds of spare ribs—any amount; that it is delivered to the customer's place of business; that if a customer buys a week's supply, it is held in the cooler and delivered to him as he calls for it. As an example of this worked, the witness recited Kistner's Market or Kamper's Market, who buy anywhere from five to fifteen cattle a week, or five hundred pounds of pork loins at a time, or five hundred pounds of hams at a time. The product is held in the cooler and delivered to the customer as he calls for it; that the Atlanta house handles both firm Western pork and soft and oily pork; that it has been handling soft and oily pork since the Fall of 1917; that the Western pork will keep longer, frozen or fresh, than the soft and oily pork; that the latter cannot be frozen for any length of time and have it show up right when taken out of the freezer. Western pork is handled both fresh and frozen, and the soft and oily pork must be frozen or it cannot be handled at all; that if it is thawed out when the customer gets it he will send it back; that it must then be resold and is worth ten or fifteen cents a pound less than it was when it went out originally. That Western pork loins will shrink about two per cent when held in the cooler for a period of from twelve to fifteen days; that soft and oily pork loins will shrink as much as five per cent when held in the cooler for a period of from five to six days; that the Western loins are corn fed
1175 and firm; that the peanut fed loins are soft, and the shrinkage manifests itself by the oil actually running out of the loin. Smoked meats will shrink about the same way in the same percentage; bacon will shrink even more—the witness has known instances where shrinkage on bacon would run as high as ten per cent.

That the branch house does not attempt to sell the soft and oily pork at the same price as it does the western; it could not; that the difference is three or four cents a pound, and many times is more than that; that they must sell it at some price where it will move; that it cannot be kept; that if an attempt was made to keep it it would spoil; that if it does not sell at the price asked for it, they make a price that will sell it—regardless of cost.

That for accounting purposes this branch house is run the same as an independent business; that everything that is shipped to the Atlanta branch is treated as a straight sale with the exception of a very few beef cuts which are sold on a commission basis; that the house is capitalized and gets out a balance sheet of its own; that it figures its own results; that the witness had checked the sales from time to time, close enough to know that the branch house has not made actual expenses for doing business on Southern pork. That a great deal of Southern pork is returned and has to be sold again; that some of it is returned every week. That the lard
from the Southern hogs is as hard to sell as any other
1176 product; that there is now in the warehouse about twenty tubs of lard from Moultrie that is just like oil; that it will not hardly hold up in winter time, then it will stay firm enough to disk it out and that is about a;; that that lard cost the branch 11-1/2 cents a pound; that the best offer he was able to get for it was six cents a pound; that at least a dozen people have looked at it and have offered from two to six cents per pound. That soft and oily products have been handled by the Atlanta branch since the Fall of 1917; that an earnest effort has been made to sell every pound of it; that all the trade has been canvassed in an effort to sell this pork. That on a number of occasions an attempt was made to handle Moultrie pork to the exclusion of the firm Western pork; that an instance is in March of this year the Atlanta branch ordered from Moultrie ten thousand pounds of pork loins and eight thousand pounds of shoulders to sell to meet car route competition; that they not only met competitors' prices but made lower prices; that the first week it went fairly well—no money was made on the loins, but enough to do business; that the second week so many kicks were received and so much of it returned that the branch had to go back to the Western pork; that some of the customers refused to buy from the branch if it did not start handling Western pork; that customers said they could not handle it and would

not attempt to handle it exclusive at any price; that
1177 the salesmen said they positively could not sell it except to only just a few customers. That in June and July, 1917, he was in actual contact with the trade, and in his opinion not over five per cent of Swift & Company's customers handled soft and oily pork at that time; that he had attended meetings where the subject of soft and oily pork was discussed; that these meetings were held with Mr. Lavery, district manager, Mr. McDowell, manager of the Moultrie plant, and managers of four branch houses; that the purpose of the meetings was to devise some means of disposing of our Moultrie plant output—and insisting on the branch houses taking it; that the branch house managers order what they want; that at times heavier product or something is substituted, and very often the quantity is increased; that when the branch houses got it they had to sell it and they had to sell it right away; that the customers do not demand the soft and oily pork, it has to be sold to them; that if one picks up a soft and oily loin and holds it by one end, the other end will flop around and meet the end held; that customers claim they cannot even hold it on the blocks to cut it. The loins come packed in boxes in sizes of fifty and one hundred pounds to the box; that the attempt is made to sell them in box lots, but not insisted upon; that a customer will be given anything from one loin up; that part of the service is to satisfy him, and if satisfied, he will order more.

1178 *Cross-Examination.*

That Mr. Stanaland was selling oily pork when he came to Atlanta and kept on selling it up to the time that Swift took over the plant. That he found after he started in as a salesman for Swift & Company in May 1917 a few of the people he called on were buying soft and oily pork from Stanaland; that he kept his manager posted on all conditions; that he not only reported the price of soft pork but he reported what all competitors were doing that affected their business.

That the total number of customers in Atlanta in May, 1917 was around 450 or 460 but that he never had counted them; that very few of his customers, from his personal experience, were buying soft and oily pork; that he did not find any of his customers buying soft and oily pork because he worked the up-town trade; that he called on about fifty customers, hotels, restraurants and some large up-town businesses, such as Kistner's Market, Forrest, Cherry, Weincoff

Hotel, Georgian Terrace, C. J. Kamper, Union Market, Ansley's Hotel, Varelas Cafe, Delmonico, Ruse & Cason, Thompsons Restaurant, Chamber of Commerce Cafe, Terminal Restauarant, Imperial Hotel, Plaza Market, McIntire Bros., J. H. Bullock, Sanitary Markets, Buhler Bros., and John G. Kato.

1179 That he cannot recall the names of the other markets that were among his customers at that time; that of the eleven markets he had named some of them handled soft and oily pork at times; that Kistner's market handled it very little only when he could not get the average western pork that he wanted; that Kistner would not handle it when he could get the average that he wanted in western pork; that the same was true of Forrest, Cherry, Kamper, Union Market, Plaza Market, J. H. Bullock, Buhler Bros. and McIntire Bros.; that the Sanitary Market handled more than the rest of them; that he would buy anything cheap; that if the packers had any loins that were a little sticky they could always unload them on the Sanitary Market at a price. John G. Kato handled little oily pork, mostly hams.

That soft and oily pork was sold both fresh and frozen at times; that his estimate five per cent of the customers of Swift & Company handling soft pork was based upon the customers he called upon in the city and by getting his information from other salesmen and at salesmen's meetings on Saturday afternoon; that all the customers he called upon handled soft and oily pork at times; that all the best markets did not handle soft and oily pork only under the same conditions that he testified with respect to his customers; that if

1180 they could not get the average that they wanted in western pork they would take southern pork rather than go short, that some of the customers all over the city would buy southern pork at times when they could not get the average that they wanted in western pork.

Redirect Examination.

That the Sanitary Market is not a customer of his; that Mr. Gatlin is a C. O. D. customer of his firm; that they do not consider him a good credit risk; that he was not a customer of theirs when witness came to Atlanta in 1917, and that condition has continued to the present time; that he remembered once or twice when some of his market men would come down to our place and pay cash for beef, veal, lamb, or pork, if they run short; very little, though. That the witness

would say that a commission of half a cent a pound on fresh meat and two and one half per cent on the balance of the products put out by Moultrie would be a good profit; that the profit of his branch would run less than that.

1181 HENRY T. GOLIGHTLY was called as a witness on behalf of respondent, and after being first duly sworn, testified as follows: pp. 2779-2791, 2807-2811

Direct Examination.

That he lives in Fairburn, a suburb of Atlanta, and is employed by the White Provision Company as head accountant for the past six years.

Witness was then asked if he can refer to the records of the Company which he has brought with him and tell the number of hogs slaughtered by the White Provision Company in the year 1916. He was asked by counsel for respondent to please do so, thereupon counsel for the Commission made the following statement:

Mr. Taylor: Now, Mr. Examiner, I wish to object to that question as irrelevant to the issues in this case.

Exam. Sadler: The objection will be noted.

Mr. Taylor: Mr. Examiner, I have been making these same objections from time to time with rather monotonous regularity since this proceeding commenced, and the objections have been uniformly noted, and we have been proceeding to take testimony going far afield. About nine-tenths of the testimony taken, according to my view, has nothing more to do with the issues in this case than a learned discourse on the effects of the moon would have to do with the art of cheese making. Now, I think it is time for us to take

1182 our bearings, and again examine the real issues in this case and determine what should go into it, and what should not. There is no use of our raising misconceived issues in our minds and offering a great amount of testimony upon them, encumbering this record with stuff that is not going to mislead either the Commission or the Court; but will merely submit us to censure for putting in a whole lot that has nothing to do with this case. This proceeding, Mr. Examiner, is based upon Section 7 of the Clayton Act. The portion of the section that has anything to do with the case I will read.

Mr. Taylor: Mr. Examiner, I think it is high time this

question was seriously presented here. It is contained in the first paragraph of the section, and reads as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share of capital of any other corporation engaged also in commerce, where the effect of such acts may be to substantially lessen competition between the corporations whose stock is so acquired and the corporation making the acquisition."

Now, Mr. Examiner, so far as this section—so far as the Clayton Act is concerned, that is all there is in it that has anything whatever to do with this case. It does not make any difference what competition there may be now, or may at any previous time have been between Swift & Company and the White Provision Company, Swift & Company and Armour & Company, or Swift & Company and any other
1183 concern, other than the Moultrie Packing Company and the Andalusia Packing Company. So far as the issues raised under Section 5 of the Federal Trade Commission Act are concerned, the only question there is unfair methods of competition as between Swift & Company on the one hand and the Andalusian Packing Company or the Moultrie Packing Company on the other hand, and relations between Swift & Company and these various others concerns having nothing to do with the case; so far as any of the issues are concerned, the quality of the material put out by the Moultrie Packing Company or the Andalusia Packing Company or by any other competitor is absolutely beside the issues; the price that they charged for it has nothing to do with the case; whether Swift & Company is pleased with its bargain or whether it is sick of its bargain has nothing to do with the case. All there is in the case, did they buy the stock; this they have admitted; was there competition at the time of the purchase of the stock; this I submit we have shown; was competition thereby or as a result thereof, eliminated between these particular corporations? Now, I submit it is not right, it is not fair to the Commission; it is not fair to the court, to gather a great mass of stuff that they must read and eliminate; and I also think it unfair to the respondent as well as to the commission to make them pay for a record, a big record that has nothing to do with the case. I therefore ask that these objections be more seriously considered.

1184 Mr. Horton: It seems to me, Mr. Taylor, that the objection comes pretty late, after some 1500 pages of

testimony has been taken by both the respondent and the commission.

Mr. Taylor: I submit the commission's case was put in with due regard to the issues, as I have just outlined them. I perhaps am somewhat remiss in not calling attention to my objections to this class of testimony as irrelevant at an earlier time, but I have been objecting to it right straight along; if we can shorten the record in any way, I think it is fortunate that the matter is brought up at this time in this way. I ask counsel for the respondent to help me keep the issues in this case, that is, to keep the evidence in this case within the real issues.

Mr. Horton: I will be very pleased to comply with your request, but I most respectfully submit that I must produce such evidence as seems to me go to to the issues in the case; my construction of the law, my construction of the facts that are applicable to the issues is not the same as yours.

Mr. Taylor: It is far from my desire to preclude the respondent from introducing any evidence which he believes fairly comes within the issues of the case, to help him prove his case or support his contention, but I must insist
1185 that a large mass of the stuff that has been brought in has absolutely nothing to do with the case; I really believe that counsel will agree with me in a very large part to that, in that conclusion, although I wont ask him at this time to say that he does, which I know would be going too far.

Mr. Taylor: Well, do I understand that the examiner rules that the number of hogs slaughtered by the White Company in the year 1916 has anything whatever to do with the question of whether Swift & Company on the one hand and the Moultrie Packing Company and Andalusia Packing Company were in competition prior to October, 1917?

Exam. Sadler: Nothing to do, no.

Mr. Taylor: Can you conceive, Mr. Examiner, that this has anything whatever to do or throws any light upon the question of whether or not the effect of that acquisition was to eliminate competition between Swift & Company and those other two companies?

Exam. Sadler: No, I would not want—

Mr. Taylor: Then why should this record be encumbered; the mere fact that we have done it in the past ought not to be precedent for continuing to do it.

Mr. Horton: I take it your Honor is not going to construe

the issues at the present moment without hearing argument on both sides?

1186 Mr. Taylor: I would be exceedingly glad to have counsel for the respondent given every possible opportunity to argue this question; if I am wrong, I will be only too happy to have it pointed out to me, or shown wherein I am wrong. I would state again that my desire here is solely to come down to the real issues of the case, and avoid unnecessary taking of testimony; it is not to preclude counsel for the respondent from putting in anything which really has anything to do with the case; I am perfectly honest and sincere about that; and accordingly should be only too glad to have counsel fully heard upon that question, and at this time.

Mr. Horton: I dont care to argue it now, but I think that the purpose of this evidence will be very apparent when it is all in.

1187 Witness Golightly then gives the number of hogs slaughtered by the White Provision Company for the years in question as follows:

Number of Hogs Slaughtered by White Provision Company.

			From Ga. and Ala.		From Tenn.	
Year.	No Hd.	Live Wt.	No. Hd.	Live Wt.	No. Hd.	Live Wt.
1916	25727	No other data available				
1917	26314	3,972,973	23,591	3,511,005	2723	461968
1918	25693	No other data available				
1919	34785	5,414,247	21,237	3,364,316	13548	2049931
1920	36428	6,210,535	11,497	2,063,545	24931	4146990

Witness Golightly, referring to records before him, gave the number of pounds of fresh pork products sold by the White Provision Company in Atlanta and suburbs for the week ending September 30, 1916, and for each week thereafter down to and including May 26, 1917:

Week Ending	Pounds fresh pork	Pounds of Whole Pigs
September 30	6860	5491
October 7	8173	9705
October 14	11464	9220
October 21	16023	1732
October 28	19836	19712
November 4	22674	22039
1188 November 11	19362	21020
November 18	23092	23715
November 25	24261	18927
December 2	17329	27963
December 9	18342	22848
December 16	16843	22734
December 23	25174	27736
December 30	22161	28166
January 6, 1917	17485	17346
January 13	26051	31860
January 20	22631	25687
January 27	20584	29496
February 3	19040	22837
February 10	24924	32551
February 17	22009	18747
February 24	19275	21298
March 3	18360	16728
March 10	13101	34028
March 17	20964	24560
March 24	24133	19448
March 31	16638	13094
April 7	10686	9993
April 14	8226	9033
April 21	6186	6212
1189 April 28	4679	2065
May 5	6056	1529
May 12	8692	874
May 19	10272	516
May 26	7708	629

That the total sales of fresh pork and whole pigs was 1,194,042 lbs.

1190 After Recess.

2:00 o'clock P. M. June 30th, 1921.

Exam. Sadler: The hearing will come to order.

M. M. STANALAND was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. Are you the same M. M. Stanaland who appeared and testified in this proceeding last March?

A. I am.

Q. You are.

Mr. Taylor: Mr. Examiner, I ask that these two books which I have here by marked for identification.

Exam. Sadler: The books will be marked Exhibits
1191 A-26 and A-27 for identification.

(The books referred to were marked Exhibits A-26 and A-27 for Identification, respectively).

Q. (By Mr. Taylor) Mr. Stanaland, I show you a volume of accounts marked Exhibit A-26 for identification, and I will ask you to state for the record what that book is, what those accounts therein contained represent?

A. This is the record of ledger record of the invoices for Moultrie Packing Company from February 1916 to April, 1917.

Q. Now, will you please explain more fully just what you mean by invoices?

A. I mean they were posted from the sales tickets of the Moultrie Packing Company, which were billed in my office, a copy of which was sent to the Moultrie Packing Company each day.

Q. Now, you have before you at the present time an account which is headed at the top "C. O. D."

A. That means cash sales, cash was received on that when sales—after the delivery was made it was entered as C. O. D. Account.

Q. Immediately after the date appears a name, what is that name?

A. That is the name of the customer to whom the products are delivered, or sold and delivered.

Mr. Horton: Mr. Examiner, may we have an objec-
1192 tion to all this testimony on the ground it is immaterial, irrelevant and incompetent, not pertaining to the issues?

Exam. Sadler: The objections will be noted.

Mr. Horton: May it be understood that that objection continues to the entire line of testimony in regard to the accounts in question?

Exam. Sadler: Yes.

Mr. Taylor: What was that answer?

(Answer read)

Q. And all of these customers received their things and paid cash on delivery, all the goods in this particular account?

A. Yes.

Q. Immediately after the name there is a column at the top of which is the word "Fol." in which figures appear, what do those figures relate to?

A. "Fol.", that refers to the serial number of the ticket, sales ticket; we did that in order that we might refer to each sales ticket.

Q. Now, will you please explain what you mean by the sales ticket?

A. That means the invoice.

Q. Where was that invoice made out?

1193 A. It was made out in my office in Atlanta.

Q. How was that used in connection with the sale?

A. Well, originally we made a duplicate copy of each invoice, the original was retained in my office as my record and the duplicate was mailed to the Moultrie Packing Company, Moultrie, Georgia.

Q. So that the Moultrie Packing Company had a record of each one of these transactions at that time?

A. I suppose they had, yes.

Q. I say, had at that time?

A. Yes, they had a record, I mailed them to them.

Q. Now, under the column "Debits" are certain figures, apparently representing dollars and cents?

A. Yes.

Q. What does that represent?

A. Represents the charge, the amount of the charge of each invoice.

Q. The selling price of the goods sold in each case, you mean?

A. Yes sir, that was the extension of the invoice, total amount of the invoice.

Q. Now, near the right hand side of the page there is a column headed "Items", apparently opposite each fig-

1194 ure, each account there is a small "C", what does that indicate?

A. That represents cash, cash received for those, each of those invoices.

Q. Now, under the column, "Date" here, are certain dates in there, what do those dates represent?

A. That is the date on which the cash was received.

Q. I take it the date at the extreme left hand margin of the page is the date when the goods were shipped out or ready for shipment?

A. Yes sir.

Q. Which would that mean?

A. What, on the left hand side?

Q. Yes?

A. That would mean the date upon which the goods were delivered.

Q. Please explain it is a day and sometimes two days would intervene on these C. O. D. items between the date on the left hand side of the page and the date on the right hand side of the page?

A. Well, that was probably due to the fact that we made deposits for the Moultrie Packing Company, and that was the date upon which we made the deposits, for instance, we could not finish running up our cash sales for the day, and it was deposited next day. Sometimes we probably skipped
1195 a day of deposits; that represents the date upon which the deposits are made to the credit of the Moultrie Packing Company.

Q. That is, the date on the extreme right hand side of the page represents the date of the deposit to the credit of the Moultrie Packing Company?

A. Yes.

Q. Now, turning over into the portion of this book that is divided into different letters of the alphabet, what do these pages represent? For instance here is a page headed "American Bakeries Corporation"?

A. They represent open accounts, that part of the ledger, I mean the books, with those different parties.

Q. Now, at the left hand edge of the page is an item for the date, the same as on the page we have just examined, what do the dates appearing in that column represent?

A. The dates on which the products represented by that invoice, particular invoice, were delivered.

Q. Now, under the column heading "Fol.", there are certain figures to what do they refer?

A. That represents the number of the—serial number of the invoice.

Q. The same explanation applicable as that which
1196 you made in connection with the C. O. D. accounts?

A. Yes.

Q. And the next item is "Debits", I assume that that is the amount at which the goods were charged?

A. Yes.

Q. Then follows an item headed credits; what do the items entered in that column represent?

A. They represent amounts paid on and for the account.

Q. What does the item on the extreme right, what does that represent?

A. Date upon which payments were made.

Q. And the column on the left hand side, near the left hand side of the page, headed "Items", what do those entries represent? Right hand side of the page, I mean?

A. Right hand side of the page? Why, they were—some of them represented cash. I notice some few items marked "M direct"; that means that the check was sent to Moultrie direct, to the Moultrie Packing Company direct, and they advised me to that effect and I made the credit.

Q. That is, sent direct by the American Bakeries Corporation, in this particular instance?

A. Yes.

1197 Q. Now, Mr. Stanaland, turning over to the account of E. L. Broad in this same volume, A-26 for identification, I call your attention to an entry in the column headed "Items", appearing on the right hand side, "C. M.", I will ask you what that signifies?

A. In that particular instance I dont recall; ordinarily C. M. would mean credit memorandum, for merchandise returned, but I dont know whether that one means credit memorandum or not. I could not tell without referring to my records on that date. C. M. means credit memorandum, or that an allowance was made on it.

Q. That would be so in any case?

A. Yes.

Q. Do you have in mind, Mr. Stanaland, any time that C. M. means anything other than credit memorandum, where it appearing in this right hand column headed "Items"?

A. No, I dont recall; I dont remember any instance, that is what it usually stands for.

Q. Now, Mr. Stanaland, I show you a book marked A-27 for identification, and I will ask you to state for the record what that book represents?

A. That is another ledger record of the Moultrie Packing Company from April 1917, to November, 1917.

1198 Q. When you say it is a ledger record of the Moultrie Packing Company, do you mean of all of the business transacted by the Moultrie Packing Company, or merely all of the business which you did as broker for the Moultrie Packing Company?

A. Business that I did as broker for the Moultrie Packing Company.

Q. And all of the items in those two volumes, do they represent sales made by you as broker for the Moultrie Packing Company?

A. Yes.

Q. As a matter of fact, did you represent the Moultrie Packing Company as broker prior to the date covered by either of these books?

A. Yes.

Q. Can you state whether or not these books represent the entire transactions which you had for the Moultrie Packing Company over the period which they cover in point of time?

A. No, I represented the Moultrie Packing Company previous to February, 1916, as well as I recall, all orders were sent direct to the plant; they were filled, packed and filled at the plant, I was furnished with copies of these invoices and statements each week.

Mr. Horton: I move to strike out that answer on the

1199 ground it is not responsive.

Exam. Sadler: The motion to strike will be noted.

Mr. Taylor: Yes, Mr. Examiner, it is not responsive, but I will ask the witness why it was that the transactions which he had with the Moultrie Packing Company prior to the time that is covered by these books do not appear in these or similar books?

A. Because the records were kept at the Moultrie Packing Company; on account of the fact that all orders were filled at that time direct with the plant, instead of being consigned in bulk to me in Atlanta.

Q. Well, will you please explain a little more fully how you took the orders and how the orders got to the plant?

A. I took the orders from my customers and sent them in to the plant to be shipped on a certain day, all in one car; they mailed me a copy of each invoice and I delivered each order to each customer.

Q. And the collections were made by the Moultrie plant direct?

A. No, I made the collections and deposited it to the credit of the Moultrie plant.

Mr. Taylor: Now, Mr. Reporter, please read my original question to the witness.

(Question read as follows:)

1200 "Q. Can you state whether or not these books represent the entire transactions which you had for the Moultrie Packing Company over the period which they cover in point of time?"

A. I think that covers all between those dates, as far as I know it does.

Q. Then your answer will be you think this is complete since February 28, 1916?

A. Yes.

Q. Mr. Stanaland, are you willing—are these part of your records, of the records of your office?

A. Yes.

Q. Were these accounts entered at the time the various transactions were had?

A. Yes, during the course of business, they were entered; of course, they may not have been entered on the same day, but they were—

Q. They were entered in the regular course of business?

A. In the regular course of business.

Q. These were the regular books of account kept by you at that time in your business?

A. Yes, I kept those books at the time.

Q. You kept correct books of account, did you, at that time?

1201 A. Yes, I think those records are correct; they were kept against a similar set of books with the Moultrie Packing Company, they were supposed to have a similar set of books in their office at Moultrie.

Q. Was all of the information which was in these books forwarded by you on to Moultrie?

A. I did not understand the question.

Q. Please read the question.

(Question read)

A. All of the—a duplicate copy of each invoice was forwarded to Moultrie, also a copy of the remittance, that is, collections made and deposited to the credit of their account in the bank, were forwarded to Moultrie.

Q. Now, just what did these invoices show?

A. What did these invoices show?

Q. Yes?

A. They showed each item sold and delivered.
Q. Do they show to whom it was sold and delivered?
A. Yes, and the address, usually the address.
Q. And the amount of the item in dollars and cents?
A. Yes.
Q. And the date.
1202 A. The date.
Q. Now, I will ask you, Mr. Stanaland, if you are willing to permit these books to be received in evidence and kept in the custody of the Federal Trade Commission until such time as the case may be passed upon by the commission, and in case it is appealed to the court?

A. Well, of course, if you have got to have the records—of course, they are records of my business; if anything should come up about it, I would naturally like to have it to refer to; it is a permanent record with me; if anything should come up about it; of course, it may not—as far as I know my records are absolutely clear with the Moultrie Packing Company, but to remove those permanent records from my office—of course you can take them if you want them, but I really would rather keep them in my office; but if you have got to have them, there is nothing else to do but take them.

Mr. Taylor: Mr. Horton, without waiving any objections which you have already made, or any which you may have to make in the future in regard to these books, I would like to ask you if under the circumstances you will be willing to have a summary of these books offered in lieu of the books? Under the circumstances I am rather loath to ask Mr. Stana-
1203 land to part with them, although personally I should prefer to have the books themselves rather than any summary of them. It is simply for the purpose of getting your views on the subject that I ask you this question, and your answer to it, of course, will be without prejudice to your objections.

Mr. Horton: Mr. Taylor, I would like to investigate the matter further, look into the books and do a little checking; I have no doubt that we could arrive at a solution that will expedite matters, but yet preserve the necessary features of the evidence.

Q. I will ask you, Mr. Stanaland, then, if you are willing to let us have the books, with the understanding that if we can arrive at some feasible plan for getting a summary of the contents in the record in lieu of the books, that we will; in case we are absolutely unable to arrive at such conclusion, then the books themselves shall be offered as exhibits, and if taken

as exhibits will be kept until such time as the Commission and the Court may pass upon the case, and the books then returned?

A. Yes, I have no objection to your using the books, as far as that goes.

Mr. Taylor: In that event, Mr. Horton, I will not offer these now, but I will ask to reserve that right until later, but in the meanwhile you may cross examine as to the books
1204 to the full extent that you would if they were offered in evidence at this time, if that is satisfactory to you.

Mr. Horton: That is very satisfactory.

Cross-Examination by Mr. Horton.

Q. Mr. Stanaland, is it correct to say that one of these books is a transfer ledger, it is where old accounts are transferred in?

A. Look at the account—before I answer that question, look at the account of J. T. Bell, 127 Cherokee Avenue there. I would say that this is a transfer ledger, but it covers same period as answered in my previous answer.

Q. Properly speaking, this is a transfer ledger into which the sheets that you have no more use for were transferred?

A. Yes, at that time.

Q. You are referring to Exhibit A-26 for identification?

A. Yes sir.

Q. I notice that this ledger shows some of these accounts to be active and open down into October and November of 1917; you were handling the Moultrie product right up to that time, were you?

A. Yes.

Q. Now, I notice the account of Forrest Brothers in
1205 one of the ledgers that you have evidently had to sue to collect the money, and then you did not collect it?

A. No, they went into bankruptcy.

Q. Now, in a case of that kind, who would stand the loss, you or the Moultrie Packing Company?

A. The Moultrie Packing Company.

Q. Did you have other accounts that were not collectible?

A. Very few; there was probably some other accounts, but I dont recall them right now.

Q. Here is the account of Beacham Brothers?

A. Who?

Q. Beacham Brothers?

A. Yes.

Q. The last sale shown here is on January 19th.
A. January 19, 1917.
Q. 1917.
A. Yes.
Q. Do you know why you stopped selling them?
A. No, I dont know.
Q. W. E. Besser?
A. Yes.

Q. Only two items in the account, one on December
1206 13th 1916 and one on December 18th, 1916, do you recall why you stopped selling them?

A. I have never been able to sell that party except at times, I dont know why it was.
Q. Didnt you give him a cheap enough price?
A. What say?
Q. Offer him a cheap enough price?
A. I dont recall at the time, I cannot say one way or the other.
Q. Now, the bills receivable account there, an item here dated January 22nd, 1917, Mrs. G. A. Baldwin, demand $100?
A. Yes.
Q. On the opposite side, credits received $70. Does that relate to the Moultrie business?
A. Yes, I guess it does, as well as I recall.
Q. What was that?
A. That was a note that was given for her account, as well as I remember.
Q. That is, it is where she was behind, did not pay up, finally gave a note?
A. Yes, finally gave a note. I think her husband dies, first, I know her husband died, as well as I remember.

Q. Here is—also on bills receivable—there is some
1207 notes due from M. Mandele and C. Mandele?

A. They went into bankruptcy.
Q. Did you lose money on that account?
A. We lost some, not a great deal; it was not a very large amount.
Q. (By Mr. Taylor) Does the account there show the amount?
A. Yes.
Q. (By Mr. Horton) Also the account of E. L. Adams & Company, the last sale is in April, 1917, do you recall why you stopped selling them?
A. E. L. Adams? Why, those were wholesale grocers here in town, I possibly sold them some; why, I dont recall just

what I did not sell them any more, maybe I didnt have my price cheap enough, I dont know what it was, it may have been the lard was too soft, I could not say what it was.

Q. Did you do what might be termed a wholesale business, too as well as selling to retailers?

A. Yes, I usually had a jobber's price; I went to the wholesaler as well as the retailer.

Q. Would you sell to any of the people here in town that wanted to buy at the jobbing price?

A. Well, yes, of course if a man bought a sufficient
1208 quantity, I usually made the concession.

Q. Better price?

A. Yes sir.

Q. Would you sell to the packers, like Wilson & Company?

A. Yes, I have sold some to the packers.

Q. In considerable quantities?

A. Why, I dont recall whether it was in considerable quantities or not; you might turn to Wilson & Company account; I think there is an account there with them; this has been some time, I dont recall exactly.

Q. Evidently sold them in carload lots?

A. No, not necessarily; I was delivering them from stock here, I hardly think that I sold them carload lots; I think they did pick me up on some pure lard there one time, when the price went up; I think it is about the last item on there; I have forgotten most of them.

Q. Would you give him a better price than you would give to the retailers?

A. I dont recall; as a rule I did, I had to, in order to sell them.

Q. What price, how much less?

A. Well, sometimes—usually around a cent a pound.

Q. Sometimes less than that?

1209 A. Maybe less than that.

Q. Sometimes more than that?

A. Well, sometimes more than that; depends a good deal on the market, whether the market was advancing or whether the market was declining.

Q. On a declining market you would be inclined to give them a better price?

A. If it was apparent that there was going to be anything like a pretty heavy decline.

Q. Did you ever sell to Swift & Company?

A. I dont remember; let's refer to the account; no, I dont think I ever sold to Swift & Company.

Q. (By Mr. Taylor) How about the period prior to these books, have you got any recollection as to that?

A. No, I dont recall ever having sold them at all.

Q. Well, there were some sales to Swift & Company came in in a car which you had since that, by the plant?

A. Well, it was probably billed from the plant, it was not billed by my office.

Q. That is what I mean; of course that would not appear in this record.

A. No, it would not appear on the record.

1210 Q. (By Mr. Horton) Well, there is not any reason why—there is not any reason that you know of as to why you would not have sold to Swift & Company the same as you would to any other large dealer?

A. None at all.

Q. You would have given them the same price you would have given any other large dealer?

A. Yes.

Q. I notice in 1916 you made some sales to Morris & Company?

A. Yes.

Q. You gave them the jobber's price?

A. I suppose I did, I dont recall at the time, I usually did.

Q. (By Mr. Taylor) Would the size of the sales have anything to do with the price they got?

A. Yes, as a rule that was true.

Q. (By Mr. Horton) If they bought it in carload lots, you would be willing to give them a price under what you were selling to retailers?

A. Well, if they bought in carload lots, I usually submitted the price to the plant of the Moultrie Packing Company.

Q. Have you know of such cases?

A. What say?

1211 Q. Were there cases where you sold it in carload lots?

A. Yes, I think so, that did not go through my records here, though.

Q. That would be outside of these records?

A. That would be outside of these records, yes.

Q. (By Mr. Taylor) Would it be within the same period of time that is covered by these records?

A. Possibly so, yes.

Q. That was a direct shipment, though?

A. It was a direct shipment, billed by the Moultrie Packing Company direct, and I would receive a small brokerage on the car shipped direct.

Q. (By Mr. Horton) A smaller brokerage?
A. A smaller brokerage, usually, yes.
Q. How much smaller, what would the brokerage be on that?
A. It is usually one per cent.
Q. One per cent of the price?
A. Yes.
Q. One per cent of the invoice?
A. One per cent of the total amount.
Q. Of the sale?
1212 Q. That is to say, if the carload sold for $2000, you would get $20?
A. $20, yes.
Q. I notice here the Atlanta Flour & Grain Company, the last sale to them was in June, 1917, do you recall why you quit selling that firm?
A. Possibly due to the fact that the weather was too hot, and the lard as a rule was rather soft; it did not stand up very good in hot weather.
Q. B. & B. Grocery Company, last sale to them was on March 9th, 1917, do you recall why you stopped selling that firm at that time?
A. I dont recall exactly, but I am of the impression that—I withdraw that answer; I dont recall.
Q. C. B. Barnhart, the last sale made to him was June 6, 1916, I would judge?
A. Yes.
Q. Do you recall why you stopped selling him?
A. Yes, he would not pay, he did not pay.
Q. I show you here—I call your attention to his account; it would seem to me that the sales were small; didnt he have a big market?
1213 A. No, not very; he was at 26 South Broad street.
Q. That is down in the city here, isnt it?
A. It is in the city but it was not a very large market.
Q. Down near Kistner's market?
A. No, it was beyond Kistner's market; it was near where the Sanitary markets are now, but at that time it was not a very good market section of the city; he never made a success.
Q. Do you recall why you was not able to sell him more goods?
A. I did not want to sell him very much.
Q. I notice the account of L. L. Brandon Market Company, the last sale made to them was in December, December 11, 1915?

A. Yes.
Q. Do you recall why you did not sell—
A. They would not pay that bill; I did not sell them any more stuff, did not want to sell them.
Q. That was one bill you never did collect?
A. Never did collect.
Q. Here is Bray & Speights?
A. Yes.
Q. I notice you made one sale to them, three dollars, the last sale was made February 16th, 1917; do you recall why you did not sell that firm?
1214 A. I was never able to collect the balance due there.
Q. Was that balance due ever collected?
A. Never collected. They went out of business some time after that was sold.
Q. Here is the account of Brogden & Thompson?
A. Yes.
Q. Last sale to them was on May 10th, 1917, do you recall why you discontinued selling that account?
A. No, I dont recall.
Q. Here is the account of Buchanan-Shelton Grocery Company, the last sale was made on March 9, 1917?
A. Yes.
Q. Do you recall why you discontinued selling that account?
A. No, I dont recall.
Q. What is your idea on it?
A. Well, I was never able to sell Buchanan Shelby Company very much stuff; I am not able even now to sell them very much.
Q. (By Mr. Taylor) What kind of stuff are you handling now?
A. Western meats.
Q. That kind that is called firm pork?
A. Yes.
Q. (By Mr. Horton) Do you know why that is, Mr. Stanaland?
1215 A. What is that?
Q. What reason do you ascribe for it?
A. Maybe he doesnt like to trade with me, I dont know.
Q. W. A. Byers; I notice the last sale made to him is in December, 1916, do you know why you discontinued selling that account?
A. He was too slow in payments.
Q. Well, he paid that bill on January 16th?

A. He bought it on December 18th, too; our terms were weekly.

Q. Part of it December 20th?

A. Yes, but our terms were weekly.

Q. I notice the account of Ed L. Campbell, the last sale is on April 7, 1917, do you recall why you stopped selling them?

A. As well as I recall he discontinued business at that address at that time; in fact, I think he discontinued business prior to that time; he is not in business here in Atlanta now, except as a peddler.

Q. I notice the account of the Camp Grocery Company, the last sale to them is on November 9, 1916?

A. They made—they either went into bankruptcy or made a composition settlement; I think they went into bankruptcy, and they never opened up any more.

Q. Is that an account upon which you lost some money?

1216 A. There was a small amount lost there; there was something between four and five dollars.

Q. I notice this book is in apparently several different handwritings, did you keep it altogether, Mr. Stanaland?

A. Oh, I had two or three— I had one or two bookkeepers to keep the books at times; I did some of it myself.

Q. I notice the account of Chelema and Cefalu?

A. Chelema & Cefalu Market Company.

Q. Did you regard them as one of your good customers?

A. Yes.

Q. I notice the last sale you made to them was on April 30th, 1917, do you recall why you stopped selling?

A. I think they got in bad circumstances, well as I recall, at that time.

Q. I notice you have an item on the credit side, attorney's fees, five dollars?

A. Yes, I think, as well as I remember, that that account went in the hands of an attorney.

Q. Is that one of the accounts on which you lost money?

A. I dont think we lost any money on it, I think they finally paid it; I dont remember fully in regard to the account, I know Mr. Chelena has quit business at the present time;

1217 possibly we did lose some money on it, I dont recall.

Q. You lost $75 on the account?

A. I dont recall, I think we did, I am not sure, it was put in an attorney's hands, I dont recall just how the thing finally worked out.

Q. The City Market Company, the last sale to them is on

May 16th, do you recall why you stopped selling that account at that time?

A. No, I dont recall.

Q. Colonial Cash Grocery bought one order from you on December 16th, 1916, do you recall why you did not sell them any more?

A. No, I dont remember.

Mr. Taylor: I call your attention, Mr. Stanaland, to the fact that that one item was not paid until January 13th, would that have anything to do with it?

A. Yes, if it ran over thirty days, I usually declined to sell them altogether after that.

Q. (By Mr. Horton) Cooper Grocery Company, the last sale to them was on March 2nd, 1917, do you recall why you discontinued selling that account?

A. No, I dont remember the account; I never worked the suburban towns so very closely, and that possibly was
1218 one of the reasons, another reason was that they usually wanted me to pay the express to suburban towns on their products out there, and I had no authority to do so.

Q. (By Mr. Taylor) Where were they located, Mr. Stanaland?

A. College Park.

Q. (By Mr. Horton) E. J. Costly, the last sale was made to him on May 15th, 1916, do you recall why you discontinued selling that account?

A. No, I dont recall; I never did sell E. J. Costley very much stuff, and I am not selling him much now.

Q. (By Mr. Taylor) Mr. Stanaland, I direct your attention to the fact that the bill was not paid for until January 2nd—June 2nd, I should say?

A. Well, that might not have had anything to do with it; as a rule we did not let them run, but I knew him very well, and I would have made some allowance for his to run; any other bill I cut them off when they ran over thirty days; I did not have authority to carry them.

Q. (By Mr. Horton) Wouldnt you cut them off until they paid up, and if they paid up, wouldnt you start selling them again?

A. Well, if they wanted thirty days, I didnt have any authority to carry them that length of time.

1219 Q. But after they paid up you could sell them again?

A. Well, if they wanted to pay weekly I could have.

Q. Yes. Well, now, these suburban accounts, did you say they wanted you to pay the express on them?

A. Yes sir.

Q. Somebody has to pay the express on them if they sold them, didnt they?

A. Well, yes, that is true.

Q. It all comes out of the price, you add it onto the price of the goods, dont you?

A. I usually had one price as near as I could possibly carry it, except of course to the jobber.

Mr. Horton: I move to strike out that answer as not being responsive.

Mr. Taylor: Now, Mr. Examiner, I think that is very decidedly responsive.

Exam. Sadler: The motion to strike will be noted.

Q. (By Mr. Horton) Do you wish us to understand that you would not add the express onto the price of the goods and sell it out to the suburbs?

A. Well, I didnt do it at the time.

Q. You wish us to understand that you didnt want
1220 to do it, it was not your way of doing business.

A. Well, if I add the express, it was usually put down as express on the invoice, in fact, that is the only way I am selling them now, is to bill out the goods at a certain price and then at the bottom of the invoice, I would add up the—whatever the express charges amounted to; if I prepaid the express charges.

Q. You wish us to understand then, that you did not want to add anything to the price of the goods to cover the cost of transportation?

A. I always find it more satisfactory to bill to a man the other way, let him understand what he is paying for it.

Q. You dont want to do it, adding transportation charges onto the cost of the goods?

A. I prefer not to do it that way.

Q. You prefer not to do it?

A. Yes sir.

Q. That is the way you want your answer understood?

A. Yes.

Q. How did you do it on these accounts that you sold out to College Park?

A. How did I do it?

1221 Q. Yes?

A. I added the express to the invoice, it was added into the total amount of the bill.

Q. How are you doing it now, on your suburban business?

A. The same way.

Q. I call your attention to an account of Drewery—
A. M. L. Drewery?
Q. Yes.
A. College park.
Q. Last sale to him was on June 9th, 1917, why did you discontinue selling that account?
A. Oh, we were getting along at that time where it was getting most too hot for him to handle very much stuff; I dont recall the products I was selling him, but if it was fresh pork business, he was not using as much fresh meats, and some of those grocery stores who had markets in there in their stores discontinued their markets along at that time.
Q. How about this man, do you know that he discontinued?
A. I dont recall whether he did or not.
Q. (By Mr. Taylor) You mean by that, Mr. Stanaland, that he did not have refrigeration and could not keep the goods in the summer time?
1222 A. Oh, yes, he would have refrigeration, but as anybody who has been in the packing house game knows, there is very little money made during the summer months, especially June, July and August, in the market department.
Q. (By Mr. Horton) Did your customers take more kindly to your goods in the winter time than they did in the summer time?
A. Oh, no, they got the firmer stuff in the summer time, liked it better as a rule.
Q. You mean western pork?
A. Western pork, yes; we get some firm pork from the south, but Georgia runs principally to the peanut hog, soft hog.
Q. Soft hog?
A. Soft hog.
Q. What account did you get after you discontinued handling Moultrie products?
A. The Tifton Packing Company.
Q. Did you bring that product in?
A. Yes.
Q. When did you discontinue handling that account?
A. Didnt understand the question.
Q. When did you discontinue handling that account?
A. The Tifton Packing Company?
1223 Q. Yes?
A. I think it was, as well as I recall, it was in June, 1919.
Q. All the time between the date you got that account and

the date you discontinued, you were bringing that pork to the Atlanta market and selling it?

A. I didnt understand the question.

Q. While you were handling the Tifton Company you were selling the product on the Atlanta market?

A. Yes.

Q. Then what account did you get, after Tifton?

A. Macon Packing Company.

Q. How long did you continue with that?

A. Handled that about a year.

Q. Up until about 1920?

A. 1920.

Q. Then what happened?

A. I dont know what happened; the Macon plant closed down.

Q. Do you know why it was closed?

A. I dont know; it was owned, as I understand it, by the Allied Packers, something like that; I suppose they closed because they were not making money; I dont know of any other reason, merely supposition on my part.

1224 Q. Then what company did you get?

A. The Sinclair Sales Company, Cedar Rapids, Iowa.

Q. Are you handling that account now?

A. Yes.

Q. Is that the only account you have?

A. Yes, that is the only account I have.

Q. Do you handle any of their merchandise besides meats?

A. They dont carry any other.

Q. I mean do you as broker?

A. A little stuff, meats and produce, that is, the produce line, in the way of cheese, butter and some eggs.

Q. Carrying flour or not?

A. I have some flour, not a great deal.

Q. When you were handling Moultrie products, did you handle that account exclusively, or did you have other lines?

A. I handled that account exclusively.

Q. Now, you had no other lines, at all?

A. Had no other lines at all.

Q. No flour, no produce?

A. No.

Q. Butter or eggs?

A. No, nothing of that kind.

1225 Q. Nothing of the kind?

A. I didnt have the facilities to take care of it.

Q. Did you have a cooler at that time?

A. I have—I had a very small cooler, ice cooler, ice box, you might say, that I usually carried some of my stuff, put a certain quantity in it, but I sold a great deal of my stuff from the car.

Q. How would you handle those cars when they came in, would you unload the car and deliver the goods to the consumer, or would you take it to the house?

A. Why, I sent my orders into the Moultrie Packing Company, and they filled my orders there; in other words, they packed the items and they billed them all from the plant; then when they came in, they sent me a duplicate invoice; I delivered according to that invoice; afterwards they were very slow in getting their statements and all to me as I wanted them—

Q. Afterwards? After what time?

A. Along after—I think it was January, but I am not sure.

Q. January of what year?

A. January 1916.

Q. Go ahead.

A. Then I began to bill on their invoices; they sent 1226 me their invoices; I billed to the customer on that.

Q. What I am getting at is as to how soon you delivered the stuff at the market, how soon you delivered it to your customers?

A. Usually right away; in other words, as soon as it arrived.

Q. You unloaded the car, took it into your warehouse, put it on your wagon and took it out to the customer?

A. Yes.

Q. What facilities did you have for delivering to your customers?

A. I had a truck?

Q. Automobile truck?

A. At first I had a dray, and then I had an automobile truck afterwards.

Q. One truck?

A. Just one truck.

Q. Now, when you represented the Tifton Packing Company, did you have a cooler then?

A. How is that?

Q. When you represented the Tifton Packing Company, did you have a cooler then?

A. Yes.

Q. You had additional facilities put in, did you not?

A. Yes.

1227 Q. You still have the cooler now?

A. Yes sir.

Q. Are you selling fresh pork in the market now, Mr. Stanaland?

A. Yes sir.

Q. And the full line of packing house products?

Mr. Taylor: Mr. Examiner, I object to that, no part of the cross examination, irrelevant; the testimony will show that he was cross examined on this before.

Exam. Sadler: The objection will be sustained.

Mr. Horton: I think that is all.

Redirect Examination by Mr. Taylor.

Q. Mr. Stanaland, I desire to call your attention to the fact that the letters which you received advising you that your relation as broker was not to continue any longer with the Moultrie Packing Company, was along in the latter part of October, I think about the 26th, and you have sales here as late as the 8th of November. I will ask you to explain how that was?

A. Well, at the time they sent me that letter, discontinuing, I had a certain amount of products on hand, and they requested, as well as I remember, that I close out what products I had on hand; there was some of those products

1228 that were left on hand at the time, possibly lard, cured meats, I dont recall just what it was.

Q. Now, when you took the Tifton account, did you sell the Tifton pork to substantially all of your old customers here, is it your recollection?

A. Practically the same.

Mr. Horton: Just a minute, please, I move to strike that out, your Honor, on the ground it is irrelevant to the issues; second that there are records which will show:

Q. You have the records, havent you, Mr. Stanaland?

A. What say?

Q. You have a ledger account of your customers with the Tifton Packing Company?

A. Have a ledger account?

Q. Have you a record of the customers you sold to while you were handling the Tifton Packing Company?

A. Yes, I havent it with me.

Mr. Horton: I move to strike it out.

Exam. Sadler: The motion to strike will be noted.

Mr. Taylor: Well, I will say that if counsel for the re-

spondent desires, I would be very glad to ask for a subpoena for the records showing the Tifton plant; I hardly
1229 thought it was of sufficient value to justify proceeding along those formal lines. I recognize the fact that counsel has the right to demand the best evidence.

Mr. Horton: If you noted the grounds of my objection, you noted that I also make the objection that it is immaterial.

Q. (By Mr. Taylor): Now, Mr. Stanaland, several of the witnesses produced by the respondent here have testified—

Mr. Horton: Just a minute, please, I object to this question as being improper redirect examination and as not being brought out in the redirect examination of the witness.

Mr. Taylor: Mr. Examiner, I think that counsel for the respondent is laboring under a misapprehension as to the circumstances under which the cross examination was conducted; I think if you will refer back to the record, it will appear that I stated that he might cross examine as to these books; I did not at that time intend to state that I had fully finished my direct examination; in fact, I had no intention of suspending the whole of my direct examination at that time; I did not understand that the cross examination would go beyond the books.

Mr. Horton: I misunderstood you, Mr. Taylor, I did not understand it that way, I understood you had finished your direct examination.

1230 Mr. Taylor: No, I did not so intend it. I think the record will show I limited my offer of cross examination to these books.

Exam. Sadler: The objection will be noted.

Mr. Taylor: How far did I get on my question?

(Question read)

Q. (Continuing) —that there were not more than five per cent of the regular dealers, meat dealers in Atlanta handling soft pork; I will ask you what your observation is as to the condition at the present time with respect to the same matter?

Mr. Horton: Now, just a minute, please, Mr. Stanaland. I object to this, your Honor, on the ground that it is incompetent, immaterial, irrelevant; the witness has not shown that he has any knowledge of the fact; on the ground that his observations are not germane to the issues here. It is altogether improper rebuttal.

Exam. Sadler: The objection will be noted.

A. Read that question, please.

(Question read)

A. I would say that that would be—from my observation, that about five per cent is about right.

Q. That is, at the present time?
A. At the present time.
1231 Q. Five per cent at the present time?
A. Yes sir.
Mr. Taylor: That is all.
Mr. Horton: That is all.
Exam. Sadler: The witness will be excused.
(Witness excused.
Mr. Taylor: That is all we have.
Exam. Sadler: We will adjourn to Jacksonville, Florida, to Tuesday, July 5th, at the Federal Building, room to be designated later.

(Whereupon, at 5:00 o'clock P. M. June 30, 1921, an adjournment was taken to the Federal Building, Jacksonville, Florida, at 10:00 o'clock A. M. July 5th, 1921).

1236 P. J. SAUNDERS called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having been sworn, testified in substance as follows: (PP. 2855-2860)

That he is Vice-president of the P. & O. Steamship Company in charge of purchasing of meats and meat products, and has been for the past seven years; that his office is in Jacksonville, Florida, where he purchases for the entire line of boats; that purchases of meat products amounts to approximately $110,000.00 per year; that he buys both beef and pork products; that he is familiar with what is known as soft and oily pork and that he does not use it in his business and always specifies Western hard pork; that he considers oily pork inferior to firm pork; that he does not use Southern beef, but in both beef and pork he demands Western meats; that his meat bids are open to competition from all the houses in Florida, Cudahy, Kingan, Swift and Armour; that Armour, Swift, Smith Richardson & Conroy, and Kingan & Company are trying to get his business; that he sends out bids every 60 days for his requirements for the following 60 days, and those firms make their bids, and in addition, a salesman comes around to see him, or telephones about every 60 days; that he awards the contract to the lowest bidder.

Cross-Examination.

That he has never had any dealings with the Moultrie Packing Company.

1237 B. A. MURPHY called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having been duly sworn testified in substance as follows: (pp. 2861-2865)

That he is engaged in a general line of merchandise, handling meat in connection with his business as a retailer; that he has been in this business about twenty three years in Jacksonville and Atlantic Beach; that he does not handle meats in his Jacksonville store; that Atlantic Beach is a suburb of Jacksonville; that the principle meat products that he handles is pork loins; that he handles mostly Western meats, because he always always asked for the best; that he purchases mostly from Swift & Company; that he has bought from Armour & Company, Wilson & Company and Smith-Richardson & Conroy Company.

1238 W. M. BAKER called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having been duly sworn testified in substance as follows: (pp. 2865-2870)

That he is the same Mr. Baker who testified in this case before—last March; that from his observation there has always been a certain spread between Southern pork, soft pork, and the Western pork, generally 2¢ to 5¢ per pound; that this was true last winter and that he was able to get all the Southern and Western pork he wanted during the past winter.

1239 J. H. WEISENFELD called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having been duly sworn testified in substance as follows: (pp. 2870-2874)

That he is the same Mr. Weisenfeld who testified in this case before in March; that he bought meat from Sam Smith when he was representing the Moultrie Account and at the same time he handled Western meats; that he has continued to handle Southern meats—soft pork, and has purchased it from Swift & Company; that he prefers to buy it from Swift & Company, because during the time he bought from Sam

Smith the stuff was rough packed, unfrozen, and did not come to him in good shape, but now it is wrapped up nice, has good weights, and comes in frozen; that he is almost compelled to handle frozen meat in Jacksonville.

Cross-Examination.

That he never told Mr. Smith that the Moultrie goods were not in good shape; that he has learned something new since that time in regard to packing that stuff; that Swift & Company is putting it out like he never dreamed it could be put out; that he has always been able to get soft and oily products in the Jacksonville Market.

1240 J. A. GIES called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having first been duly sworn testified in substance as follows: (pp. 2875-2878)

That he is engaged in the business of operating a retail and wholesale meat market in Jacksonville and has been for a period of 4½ years, having started January 1, 1917; that he has handled Western and Florida pork and also soft and oily pork; that he purchased meats from Sam Smith when he was handling the account of Moultrie Packing Company; that he purchased pork and pork products including hams and bacon from Smith; that he has bought similar products from Swift & Company; that during the last year or two, the pork he bought from Swift & Company—he did not know whether it came from Moultrie or whether it is Florida or Georgia pork —came in good shape in mighty fine condition; that it comes in better shape now than it did when Sam Smith sold it to him.

Cross-Examination.

That he never complained to Sam Smith about the pork bought from him as being unsatisfactory.

1241 F. M. HULL called as witness for respondent at Jacksonville, Florida, July 5, 1921, after having first been duly sworn testified in substance as follows: (pp. 2878-2903)

That he is manager for Morris & Company Branch House, Jacksonville, and has been for about four weeks; that prior to going with Morris & Company, he was with Florida Provision Company for a period of six years; that the Florida Provision Company and the Harmon Hull Company, its successor, handled meats during all the period of time he was with that concern selling to the retail trade in Jacksonville; that in a way the Florida Provision Company represented the Evansville Packing Company, that is, they bought from the Evansville Packing Company; that he bought also from Cudahy Packing Company, Swift & Company and all the packers.

That he is familiar with market conditions in Jacksonville; that the following companies were represented and selling full line of packers products: Cudahy Packing Company, Swift & Company, Armour & Company, Kingan & Company, Moultrie Packing Company for a while, Chipley Packing Company, Chipley, Florida, Tifton Packing Company, Wilson & Company, Smith Richardson & Conroy; that Swift & Company, Armour & Company, Morris & Company, Cudahy Packing Company, Wilson & Company, Kingan & Company have branch houses and have been in Jacksonville for a number of years; that the Jacksonville Cattle Company has a slaughtering plant located near Jacksonville.

1242 That the following brokers were located in Jacksonville selling a packing house line: Wilson & Parker, representing North Packing Company, the Cleveland Packing Company, Saussy & Company, representing the Wilson Provision Company, Peoria, Illinois, and J. P. Squires of Boston, Massachusetts, Hulsey-Besant, representing Klink Packing Company, Buffalo, and Dold Packing Company, Buffalo, and others including Cross-Roy-Saunders of Chicago, George A. Hormell & Company, Austin Minnesota, Sahlin Packing Company; that these brokers have been in business for a number of years in Jacksonville; that in addition Hately Brothers of Chicago sell to the jobbers and retail trade in Jacksonville and O. C. Holland & Company of Montgomery Alabama, and International Packing Company, and the St. Louis Independent Packing Company are represented on the Jacksonville market; C. W. Zaring & Company represents Comstock &

Company, Providence R. I. and O. H. Wright & Company of Atlanta, Georgia quotes jobbers in Jacksonville Florida.

That there has been keen competition in the Jacksonville market every since he has been there; that he thinks competition is keener now than it ever has been before; that it is getting keener and keener, and it is hard to do business each year; that he did not notice any change in competitive conditions in June and July of 1917 or in November 1917, or March and April of 1918.

1243 That he is able to form a rough estimate of the number of pounds of pork products that were sold in the Jacksonville market in July 1916 to July 1917, based upon what he was doing himself and that he would estimate it at about 40,000,000 lbs.

1244 D. A. DUNAWAY called as witness for respondent at Jacksonville, Florida, July 6, 1921, after having first been duly sworn testified in substance as follows: (2904-2913)

That he is the same Mr. Dunaway that testified in this case in March and he is engaged in retailing meat and purchased meat from Sam Smith; that he has also purchased meat from Swift & Company, including beef and pork, Western pork, in the winter time, soft and oily pork; that he bought soft and oily pork from Sam Smith in the winter time; that Swift & Company put out soft and oily products more uniform than when he bought it from Sam Smith.

When asked the question, "How about the grade", witness replied, "I believe—I don't know that the change has anything to do with it but the times have changed. We get a better grade of pork because people are raising better hogs, taking more pains with it"; that when he buys pork loins he likes to have them uniform, 6/8 or 8/10 as he wants it; that is the only difference that he can see; that he is satisfied with the way it comes now.

That his business in 1917 and 1918 was quite a little better than it is now, for the reason that every man that worked was getting more money and there were more positions open than there are today.

1245 M. F. McCOOK called as witness for respondent at Jacksonville, Florida, July 6, 1921, after having been duly sworn testified in substance as follows: (pp. 2913-2945)

That he is branch house manager for Armour & Company and has been since September, 1920, but prior to that time he was a salesman for the Jacksonville branch of Armour from 1908 to January 1918 when he became assistant Branch House Manager; that Armour & Company sells full line of packing house products including both Western and Southern pork; that in calling on the trade he comes in contact with salesmen of other concerns (witness then listed his competitors in the Jacksonville market, this listing being substantially the same as that furnished by witness Hull, supra).

That competition has always been very keen and active and there has always been several representatives to get every order; that his experience has been that Southern pork products can be sold at a differential under Western stock running from 2¢ to 5¢ per pound; that it takes a great deal more of a salesman to sell Southern pork, even at a differential than it does the Western; that it sells a good deal more readily in the winter time than it does in the summer time.

1246 A. J. BUIST called as witness for respondent at Jacksonville, Florida, July 6, 1921, after having been duly sworn testified in substance as follows: (pp. 2945-2967)

That he is the local manager for the Cudahy Packing Company and has been for about seven years; that the Cudahy Packing Company sell everything in the line of packing house products; that it has had a branch house in Jacksonville for about twenty years; that the business of Cudahy Packing Company in 1918 showed an increase over 1917; that Cudahy business in Jacksonville in 1919 was larger than in 1917.

That in selling meat and other packing house products for Cudahy Packing Company he finds that there are other people in that market engaged in the same activities—(witness then testified as to other concerns selling packing house products in Jacksonville and this list is substantially the same as that furnished by witness Hull, supra).

In addition James Chamblis Company, local slaughter and

wholesaler; Krull of Baltimore; Jones-Lamb of Baltimore; Ferris & Company, local slaughter and wholesalers; Jacksonville Packing Company, local slaughters and wholesalers; Brennan Packing Company Chicago; Hammond Standish, Detroit, ship occasionally into Jacksonville.

That competitive conditions now are keener than they ever have been—been getting keener every year during past seven years; that from his observation and experience the years 1917, 1918, 1919, 1920 showed a steady increase in busi-
1247 ness; that a camp was located at Jacksonville during one year that made business a little better; that ship building industry at Jacksonville assisted in the increase in business, because they employed more men and spent more money and made conditions better; that wages were higher when the ship yards were there; that the ship yards were located at Jacksonville during the war.

That his firm sometimes handled soft and oily pork products and may have bought some from Sam Smith and from other local packers through brokers.

Cross-Examination.

That when he was testifying as to competitive conditions and that each year there seemed to be an increase of sales, that he referred only to business conducted by the Cudahy Packing Company and that the sales of that company had been increased from year to year; that he has no knowledge as to what any other concern was doing.

1248 J. W. BRICE called as witness for respondent at Jacksonville, Florida, July 6, 1921, after having been duly sworn testified in substance as follows: (pp. 2967-3013)

That he is the same Mr. J. W. Brice who testified in this case when the hearing was held in March, 1921, and that he is the manager of the local branch house of Swift & Company of Jacksonville, Florida and has been since 1909; that Swift & Company handles the entire line of packing house products and produce with coolers, freezers, and modern equipment for handling all kind of meat products; that he employs 8 salesmen who work on the trade in the city of Jacksonville and coast line south to Stewart and southwest to Sanford and Lusburg and down the coast line and seaboard to Ocala, Donel-

land, west to Quincy and Cedar Key on the seaboard, north on the coastline to Folkston, Georgia, and seaboard as far as Woodbine, Georgia; that this is the same territory that has been covered by his branch house for the past six or seven years with the exception of some territory which the Moultrie branch house worked from June, 1919, November, 1920 and May 1921; that in the territory which they Moultrie Packing Company had been serving, his branch had sold principally cured pork products including dry salt meats and smoked hams.

That at the present time his branch is handling soft and oily pork from Moultrie; that he began handling it in 1917 and has handled it continuously since that time; that they sell it to the trade in Jacksonville wherever they can find a buyer that they are offering it to the trade all the time; that
1249 there is some trade that will not use that pork unless it is sold to them at a very greatly reduced price and there are others that do not want it at all at any price, and there are some others who will take it at some differential from 3 to 5¢ under the price of Western pork product.

That he has kept continually after his salesmen urging them to sell the soft pork; that it is hard to sell; and if he left the salesmen alone and did not keep continually after them they would sell very little of it; that he usually has meetings of these salesmen on Saturday and urges them to sell the Moultrie product; that the District Superintendent often urges them to move the Moultrie product, and the Chicago Office of Swift & Company writes to him about it.

That the usual differential between Western and Southern pork is around 3 to 5¢, depending upon the customer with whom he is dealing.

That he has no figures from which he is able to tell whether or not he makes or looses money on the Moultrie product; that the records are not kept separately; that he figures that Swift & Company lose money on it because in the first place the shrinkage is very heavy, and in the next place they can not find buyers unless they sell it pretty nearly at what it costs; that based upon records which he has in his office of sales and earnings per cwt. per week, the earnings of Swift & Company at its Jacksonville branch house for the week ending June 25, 1921, was $1.25 per cwt.; and that during the same week the cost of business or expenses was $1.32 per cwt., or in
1250 other words, Swift & Company lost 7¢ per cwt. per every cwt. goods sold; (Quote verbatim Testimony Page 2980 to 3013).

1251 H. M. BISER called as witness for the Respondent in rebuttal at Jacksonville, Florida, July 7, 1921, after being duly sworn, testified in substance as follows: (pp. 3014-3033)

That he is steward at Gilreath's restaurant, 223 West Bay Street, and has occupied that position for six years; that the restaurant has a lunch counter and tables; that at the lunch counter are 48 stools and there are from 40 to 60 chairs at the tables; that the very best class of people come to that restaurant; that in buying food he buys the best on the market;

That he has bought pork of the Moultire Packing Company —about 5 years ago; that he stopped buying it because he could not get it from the people he was doing business with.

That he had a conversation with someone who told him that Swift & Company had taken over the Moultrie plant.

That he used to get fresh pork, hams, pork shoulders, and pork butts from the Moultrie Packing Company; and that the pork was entirely satisfactory at the price it was purchased; that if he remembers correctly he was able to get the Moultrie pork at $2.00 less than the Western pork; that if he could buy the same grade of Moultrie pork now at 2¢ less than Western pork, he would purchase it.

1252 That he is now using peanut fed smoked hams in the restaurant and that they are giving satisfaction; that he prints on his bill of fare that it is ham from peanut fed pork.

Cross-Examination.

That he does not remember that Swift & Company salesmen ever offered him peanut fed pork; that he did not know until that day that Swift & Company was handling Moultrie products; that there were certain cuts of pork that he would never use in the summer because there was too much oil in it and would not cook good and it was too hot in summer and people do not eat much pork; that he would buy smoked meats of Southern pork from 2 to 5¢ per pound under the market in season; that he would be glad to talk to Mr. Brice the manager for Swift & Company about it. That he advertises western pork on his bill of fare.

That since the Moultrie Packing Company has been selling meat in the Jacksonville market he has not been able to buy Southern meat when he wanted it because he bought practically all his pork from the Smith Richardson-Conroy and Jef-

fries Market and neither one of them had it; that he did not go to outside dealers to try to get it; that while the Moultrie plant was running, those dealers always seemed to have it; that during 1918, 1919, 1920, he has not been able to get anything but Western meat from the Jeffries Market.

1253 That the razor-back pork he advertised on his bill of fare is purchased from the Jeffries Market but he does not know where they get it but thinks it is a special country cure; that since 1917, he has never tried to buy any of the soft or oily pork except country cured hams that he is using.

When asked the question by the counsel for the respondent: "Is it correct to say that the reason you have not attempted to buy soft and oily pork is because it is not good enough for your trade," witness replied, "No, it was good enough—Well, it would be good enough now; it would be good enough in the winter time"; that not only in the winter time but certain cuts of it he could use in the summer time but not much; that he does not have much trade on any pork at all, but he can cut more out of the Western loin than he can out of the Moultrie or Georgia; that on pork loins he can make more money on Western pork loins than Georgia pork loins at a less price.

Redirect Examination.

That he never made any attempt to get any Moultrie products because he asked someone at Jeffries Market if they had any Moultrie pork and he said no, and then he did not both about it any more; that if Swift & Company had it, he did not know it.

Recross Examination.

That the Jeffries Market does a wholesale business, selling hotels and restaurants and that they cater to that trade.

1254 (Witness excused)

Examiner Sadler: Is that all?

Mr. Taylor: Yes sir.

Examiner Sadler: When shall we adjourn to?

Mr. Horton: Mr. Examiner, I will need a couple of days in Moultrie to get my testimony in shape, so I suggest that we adjourn until Monday.

Examiner Sadler: We will adjourn until 10:00 o'clock Monday.

(Whereupon, at 3:00 o'clock P. M. July 7, 1921, the hearing was adjourned to Moultrie, Georgia, at 10:00 o'clock A. M. July 11, 1921.)

1260 Docket 453.

Moultrie, Georgia, July 11, 1921.

Met pursuant to adjournment from Jacksonville, Florida, 10:00 o'clock, A. M.

Before:

Clarence T. Sadler, examiner.

Appearances:

Mr. A. N. Taylor and Mr. E. F. Haycraft, care of Federal Trade Commission, Washington, D. C., appearing for the Federal Trade Commission.

Mr. Frank L. Horton, care of Swift & Company, Chicago, Illinois, and Messrs. Hill & Gibson, Moultrie, Georgia, appearing for the respondent.

Examiner Sadler: The hearing will come to order.

Mr. Horton: I would like to have another day, Mr. Examiner, to prepare my case here.

Examiner Sadler: Is there any objection?

Mr. Taylor: Well, of course, that is up to Mr. Horton; he is putting in his case.

Examiner Sadler: All right, we will adjourn until tomorrow morning at ten o'clock.

(Whereupon at 10:02 o'clock A. M., July 11, 1921, an adjournment was taken until 10:00 o'clock A. M. of the following day, July 12, 1921)

1261 Docket 453.

Moultrie, Georgia, July 12, 1921.

Met pursuant to adjournment 10:00 o'clock A. M.

Before:

Clarence T. Sadler, examiner.

Present: Parties as before.

Examiner Sadler: The hearing will come to order.

Mr. Hill: Gentlemen, here is a petition filed by the Moultrie Chamber of Commerce here intervening in this matter.

Mr. Taylor: Wait a minute; if Mr. Hill desires to intervene here, he will have to make his application to the Commission for permission from them; we have no authority to allow him to intervene.

Mr. Hill: We have already done that; it has been allowed by the Commission.

Mr. Taylor: Have you a copy of that order? We have no instructions at all.

Mr. Hill: There is a telegram from them which they said would be sufficient to you.

Mr. Taylor: Well, as I read this, it is a denial of your application to intervene, but permission for you to get such evidence for Swift's attorney to present as he may see fit, which does not give you any status in this proceeding, and therefore I should not think we had any right whatever to note your appearance here as a party, or even as representing a party. However, that is a question for the examiner to pass upon.

1262 Examiner Sadler: I think the telegram sets that out.

Mr. Hill: What?

Examiner Sadler: I think the telegram sets out that you cannot be made a separate party.

Mr. Hill: Let's see what it says: "Hill & Gibson, Attorneys, Moultrie, Georgia. Reference Chamber of Commerce request through Congressman Parks for intervention in complaint against Swift and leave to intervene Stop. Cannot grant intervention as separate party, but you can arrange with Swift's attorney to present such evidence as Chamber desires stop. This message shown to our attorney and examiner will be sufficient authority. Nelson B. Gaskill, Acting Chairman." We want to get it in the record; we think we have a right to appear, as far as that goes.

Mr. Taylor: Mr. Hill, as I understand that telegram, if the Chamber of Commerce has any evidence which it wishes to introduce, you can arrange with Mr. Horton, and Mr. Horton will put in such evidence, or such of it as he and the Chamber of Commerce sees fit. That is my understanding of the telegram.

Mr. Hill: The original of that petition of intervention was filed with the Trade Commission yesterday. If there is any doubt about it, I want you to go ahead and hear the evidence on it. I don't know what they mean by that. I took it for granted the petition for intervention would be allowed, as provided by the statute; let the Commission determine later whether they will hear it as a separate issue or hear it in connection with Swift & Company; no difficulty about it one way or the other; if they decide against it, all right. That seems to be a little ambiguous right here.

1263 Examiner Sadler: No, it is right here: "Cannot grant intervention as separate party." I think that will

cover it. If you made application to the Commission for intervention, they might have granted it, but here it says specifically that they did not.

Mr. Hill: Let's see: "Cannot grant intervention as separate party, but you can arrange with Swift's attorney to present such evidence as Chamber desires."

Examiner Sadler: Yes; well, that would be through the attorney for the respondent.

Mr. Taylor: In other words, that is an arrangement for you to make with Mr. Horton, not a matter that is before the examiner or attorneys for the Commission at the present time; of course, I assume that we have the same rights as to making objections as to any evidence that is offered by Mr. Horton, whether it may be evidence that he is offering at the request of the Chamber of Commerce or the respondent.

Mr. Hill: Well, we desire to introduce this evidence for the Chamber of Commerce. I presume, Mr. Horton, we can arrange with you to introduce any evidence that is material in supporting the allegations of this petition?

Mr. Horton: We have no objection, Judge Hill, to introducing such evidence as you desire.

Mr. Hill: All right. We shall so far as it is in our power reserve the right before the Trade Commission, that we have a right to intervene in this as a separate party.

1264 Mr. Taylor: That telegram would indicate that they have passed upon it.

Mr. Hill: I doubt if they have heard it sufficiently to pass upon it; it got there at night, I think. They can deny it, I understand, if they want to. If they have considered the matter and have denied it, then it is all right, but I don't feel like they have given it due consideration.

Examiner Sadler: Well, all we can go by is the telegram.

Mr. Hill: We will introduce it under arrangement with the attorneys representing Swift. We will present Mr. Caldwell as the witness, Mr. Examiner.

Examiner Sadler: Stand and be sworn.

Mr. Taylor: I would like to know what the record shows about Mr. Hill's appearance here; is he noted as the attorney for any one?

Mr. Hill: You may note me as the attorney for Swift & Company or the Chamber of Commerce either.

Mr. Taylor: I don't understand that we have the right to let you appear here for anybody; as I understand this telegram, if there is any evidence which you wish to introduce, you arrange with the attorney for the respondent, and the

attorney for the respondent will examine your witnesses and will continue the proceeding the same as he has heretofore.

Mr. Hill: Well, that is notice to Hill & Gibson—that is my law firm here—saying that I may make that arrangement.

1265 Mr. Taylor: That is, if Mr. Horton wishes to introduce any evidence that the Chamber desires, then you arrange with Mr. Horton to put that in the same as he would otherwise put in the evidence for the respondent.

Mr. Hill: I think that gives me authority to introduce the evidence myself; I insist upon the right to examine these witnesses for the Chamber of Commerce.

Mr. Taylor: I shall object to it on the ground that you are not a party to this proceeding, that no order has been entered allowing you to intervene, and that it is apparent to me from the telegram submitted that your rights are only to arrange with Mr. Horton or the attorney of record for Swift & Company to introduce such evidence for you as you and he may agree upon.

Mr. Hill: All right—

Mr. Taylor: Therefore, Mr. Examiner, I object to Mr. Hill being noted here as the attorney for anybody, and I object to his proceeding to examine any witnesses.

Mr. Hill: Do I have your permission to examine these witnesses for you, Mr. Horton?

Mr. Horton: You have, Mr. Hill.

Mr. Taylor: I suggest, Mr. Hill, that you file a copy of your telegram for the record.

Mr. Hill: All right, that is what I intended to do.

Examiner Sadler: I think the best way to clear this up would be to take it up direct with Washington and get

1266 definite instructions on this.

Mr. Hill: Well, I have arranged with the attorney representing Swift to examine these witnesses for him.

Examiner Sadler: I know, but you are not a party to the record so far.

Mr. Hill: Mr. Horton requests me to examine his witnesses; these are his witnesses now, the Chamber of Commerce has abandoned them.

Examiner Sadler: Well, he would be entitled to examine the witnesses under the telegram.

Mr. Hill: I understand, but if the attorney for Swift permits me to do so, who can object under the law? Is there any law to prevent me from examining the witnesses instead of him, if he substitutes me for himself in this examination?

What difference should it make to the Government whether I examine the witnesses or Mr. Horton? It is merely a means of ascertaining the truth, either through him or myself; what valid objection could there be to any attorney examining the witnesses, if he asks me to do so in his stead?

Mr. Taylor: I would suggest, Mr. Examiner, in view of the wording of this telegram, that Mr. Hill's request to conduct this examination himself be referred to Washington; you will have a reply by tomorrow, and that—if it is the understanding and desire of the Commission that Mr. Hill should proceed, then he can proceed as he now requests.

1267 Examiner Sadler: That is what I had in mind.

Mr. Hill: Mr. Examiner, can there be any doubt in your mind as to whether or not the Commission cares whether I examine the witness or Mr. Horton? Or Mr. Gibson, or any other attorney; the purpose of this examination is to ascertain the facts with reference to the charge against Swift, to discover the truth, and if the truth can be elicited from the witnesses by myself as well as by Mr. Horton, what objection could the Commission have to that?

Examiner Sadler: I understand, but I just want to refer the matter to the Commission and let them pass on it.

Mr. Hill: Do you need any authority to permit me to ask the witness questions?

Examiner Sadler: If you want to intervene.

Mr. Hill: I am not intervening now, I am doing this at the request of Mr. Horton, examining his witnesses for him, that is all.

Examiner Sadler: I would rather take up the matter with Washington and have a definite understanding as to that.

Mr. Taylor: I think, Mr. Hill, you are not examining Mr. Horton's witnesses for Mr. Horton; you are examining the Chamber of Commerce's witnesses, your own client, for yourself, as attorney for the Chamber of Commerce, when this telegram before you shows that your application for intervention is not allowed.

Mr. Hill: I will answer that. He had adopted my

1268 witnesses as his witnesses, and permitted me to examine his witnesses for him, that is all; he has adopted the witnesses brought here to sustain our contention as his witnesses; he adopts them as his own and permits me to examine them in his stead. There can be no reason in law or justice why that should not be done.

Mr. Taylor: If Mr. Horton desires to make your witnesses his witnesses and examine them as his witnesses, I should

consider that within the meaning of that telegram, but for you to take the witnesses and examine them, I consider that contrary to the understanding of the telegram.

Mr. Hill: Now, let's see if it is contrary to the telegram; they would not—the Trade Commission would not go into such minute detail as that any way; it is immaterial to them who examines the witnesses. It says that you can arrange with Swift & Company to present such evidence as the Chamber desires.

Mr. Taylor: And that Swift & Company shall present such evidence as the Chamber desires to have presented.

Mr. Hill: It does not say that; it says I can make arrangements—

Mr. Taylor: To present such evidence—that is, Swift & Company, to present such evidence as the Chamber desires, that is exactly what I said, is my understanding of the telegram; if you desire to proceed in that way, I shall consider such procedure within the authority of the telegram.

Mr. Hill: Mr. Examiner, we ought to put this up to you and let you decide; if that is not unambiguous language I cannot conceive of anything that would be. This telegram
1269 is addressed to the Trade Commission at Washington, D. C. by Hill & Gibson, attorneys, Moultrie, Georgia; here is the telegram in reply, to Hill & Gibson, Attorneys, Moultrie, Georgia, in which they deny intervention, but say you—that is the attorneys—can arrange with Swift's attorneys to present such evidence as the Chamber desires. Now, the method of procedure, who is to examine the witnesses, is such a minute and such an insignificant matter, it is necessarily to be inferred that the Commission would not think about a thing of that sort, because it does not make any difference to them who examines the witnesses.

Examiner Sadler: Well, in that light, I will take it up with the Commission and I will reserve my ruling until later on, when I hear from the Commission, then I will give a decision.

Mr. Hill: Well, if you get authority from Washington to decide that question, of course you will have to follow that.

Examiner Sadler: In view of the telegram I would like to take it up with Washington.

1270 T. A. SMITH was called as a witness on behalf of respondent, and after being first duly sworn, testified in substance as follows:

(Pages 3044-3049, 3383-3398, 3437-3460, 3544-3548)
(" 3495-3499, 3506-3529, 3567-3572)

Direct Examination.

That he is employed by Swift & Company, Moultrie, Ga. as head bookkeeper at the Moultrie plant; that he has occupied that position since December 1917. Having produced his records, witness stated that he was able to tell whether or not the Moultrie plant operated by Swift & Company made or lost money during the year 1921, through June, and the years 1920, 1919 and 1918, and for 1917 through July to December 31st; that he has prepared an exhibit showing the said results, which exhibit is marked "Respondents Exhibit B-3" for identification; that Exhibit B-3 for identification is a true and correct copy of results shown on said books.

That since November 3, 1917, the Moultrie plant has been operated not as the Moultrie Packing Company but as Swift & Company; that Swift & Company has its own signs on the plant, its own letterheads, its own billheads and other signs which indicated that it was doing business as Swift & Company.

Witness produced, identified and authenticated the books and records showing the number of head of cattle and hogs slaughtered at the Moultrie Plant the last half of the
1271 year 1917 and for the years 1918, 1920 and the year 1921, January through to June. The books were offered and received in evidence, and leave was granted to withdraw the books and substitute an exhibit showing the number of cattle and hogs slaughtered by the Moultrie plant from July 1917 through and including June, 1921. The exhibit was marked "Respondent's Exhibit No. 3."

That he has records which will show the sales by or shipments made to E. N. Wood of Birmingham, Alabama, who represented the Moultrie Packing Company there as a broker.

Witness identified certain commission slips showing commissions paid Mr. Wood at Birmingham which were offered and received in evidence marked "Respondent's Exhibit 4" and consists of eleven different statements.

Witness identified certain commission slips showing com-

mission paid to Mr. Stanaland. These slips were offered and received in evidence marked "Respondent's Exhibit 5," consisting of twenty-one separate sheets.

Witness also identified certain commission statements showing commission paid Sam Smith at Jacksonville, Florida, for the period from October, 1915 to June, 1917, which were offered and received in evidence marked "Respondent's Exhibit No. 6."

Witness further testified that with the exception of half of the month of August for Mr. Wood of Birmingham, these commission slips represented all the commissions paid to the respective gentlemen for the periods covered. Witness
1272 further testified that the rate of commission paid was two and one half per cent on cured products such as dry salt and smoked meats, pickled pork and lard, one cent per pound on sausage and one and one half cent per pound on fresh meat; that in addition to commissions, the Moultried Packing Company paid certain storage and delivery charges.

Witness produced a statement showing number of cars shipped from Moultrie plant to Swift & Co. branch house during years 1918, 1919 and 1920 which was received in evidence and marked "Respondent's Exhibit No. 7."

Witness produced and identified records which showed the sales or shipments made by the Moultrie plant to Swift & Company's Jacksonville, Florida, house for the period of 1917—last six months—and the years of 1918, 1919 and 1920, in weight and in dollars, and the same figures for the same period for product shipped to Swift & Company's Atlanta, Georgia house. (For a portion of year 1917 the weight was omitted—the reason was that no record was available). These statements were offered and received in evidence and marked "Respondent's Exhibit No. 8." Witness further testified that these exhibits representing packing house products shipped from the Moultrie plant, and consisted of principally pork and beef—much more pork than beef; Referring to the amount of $31820.52 representing shipments made in 1917 from the Moultrie plant to Jacksonville, Fla. The first shipment was made in the month of August and continued right through to the end of December. The same
1273 is true of the Atlanta shipments. The first shipment to Atlanta was on September 27th.

Witness produced books and records which showed the amount of money invested in buildings and machinery on

October 30, 1920 at the close of the last fiscal year, excluding all money invested in automobiles, trucks, office furniture and fixtures and land. These books were offered and received in evidence and marked as "Respondent's Exhibit No. 13."

Witness produced, identified and authenticated three books marked "Respondent's Exhibits B7, B8 and B9" for identification, and stated those books were true and correct and made in the usual and ordinary course of business covering the period from July 1, 1917 to and including July 2, 1921, by fiscal years and showed the profit and loss on any given commodity such as beef, pork, lard, etc. Books were offered and received in evidence for the purpose of showing profit and loss of the Moultrie plant for the period mentioned. Permission was given to withdraw the books and substitute an exhibit on which the figures are shown, which said exhibit was received in evidence and marked "Respondent's Exhibit No. 18."

Witness produced, identified and authenticated books and records which showed the volume of meats and packing house products which have been brought in to Moultrie plant from the North and Northwest in the years 1918, 1919 and 1920.

Books and records were offered and received in evidence and permission was given to substitute an exhibit which was marked "Respondent's Exhibit No. 20."

1274 Mr. H. McDOWELL was called as witness on behalf of respondent, and after being first duly sworn, testified in substance as follows (Pages 3050-3062, 3153-3162, 3170-3175, 3530-3544):

That he lives in Moultrie, Georgia, and is manager of the Moultrie plant of Swift & Company; that he has held that position for two and a half years; that he has entire charge of the plant and is familiar with the operation of the business; that he is familiar with the prices paid for live stock and other raw material which is used in the plant; that he heard the testimony of Witness Smith, and that the results by years at the Moultrie plant are arrived at by taking into consideration actual purchase price of live stock or other raw material, and the figures represent the difference, profit or loss, between the price paid for our material and the price for which the plant sells the finished product.

That he is now manager of the Moultrie plant of Swift & Company; that he has been in the packing business for twenty-five years; that he has been manager of the Moultrie plant since February, 1919; that prior to February 1919, he worked for Swift & Company at Chicago, Illinois, in a department which had charge of the Moultrie and Andalusia plants; that his particular duties there were to look after the Moultrie plant; that he is familiar with the various phases of its operation prior to February, 1919, and visited Moultrie from time to time; that when he was made manager
1275 of the Moultrie plant, he received his instructions from G. F. Swift, Jr., an officer of Swift & Company and one of the vice-presidents of the company and in charge of the pork end of the business. That Mr. Swift stated the plant had not made money but not to be discouraged because of that fact; that Swift & Company had acquired this plant figuring that this territory would be a good live stock producing section and that perhaps the plant would not make money until the surrounding country produced enough live stock to give the packing plant an adequate, well-balanced supply of raw material; that he further instructed the witness to make the principal part of his work the aiding of the farmer in getting into the live stock business, assisting him directly and through any agencies who worked with the farmers to learn the business of live stock raising; to endeavor to have the plant turn out products in the most merchantable manner, to improve them if possible and to develop new ways of selling the product so it would bring the highest price possible, to pay for the live stock all that the Company could afford to pay without incurring an actual loss; that the hogs slaughtered at the Moultrie plant are known commercially as soft-meated hogs; that since Swift & Company acquired the plant ninety per cent of the hogs have been soft and oily; that the product from the soft and oily hogs is radically different from the usual pork products; that because of its appearance it is considered undesirable by the dealer and consumer; that Swift & Company sought to improve its appearance so that it would bring as nearly as pos-
1276 sible the general market price in the south for Western meats. That in line with the general policy to develop the live stock industry in the South, Swift & Company contributes $2500 a year to the Georgia State College of Agriculture, to assist the college in developing the teaching of farmers to develop adequate pastures for live stock; that

adequate pastures did not theretofore exist; also a donation of $250 per year to the Georgia Boys Pig Club, to be used for prizes.

That the policy of Swift & Company has been to buy all the live stock it could secure at a price that would not show an actual loss, up to the point of the maximum capacity of the plant; that in order to secure this live stock the company maintained a force of buyers of from two to five, covering all of south Georgia as far north as Atlanta, both the Carolinas, the state of Florida, southern Alabama, and has sent buyers to live stock markets such as Jacksonville, Montgomery, Nashville, and it has actually purchased live stock on those markets.

That the witness heard Mr. Brooks testify yesterday in regard to the radius in which the old Moultrie plant purchased live stock; that Swift & Company still buys in that territory and also has materially enlarged the territory over which it buys because of the constantly decreasing supply of live stock; that the live stock produced in this section has decreased since the year 1919.

1277 Q. Is it essential to the handling of live stock profitably by the producer that he have a nearby market for his stock?

(Copy testimony verbatim beginning with "A. It is essential to the handling of live stock profitably by the producer that he have a nearby market for his live stock." on page 3163 through to the end of the first paragraph on page 3170 which ends with the words "but we hope to produce it before this hearing closes."

That the witness' efforts had been directed towards popularizing products produced at the Moultrie plant, and because of their inferior quality, had to work constantly to educate the salesmen and branch house managers to sell the product—particularly to overcome the objections of said representatives to the product, they claiming that the trade preferred the Western hard meat; that he has tried to market the product in the North, East and West in such cities as St. Louis, Chicago, Pittsburgh, Harrisburg, Philadelphia, New York, Baltimore, Richmond, and Norfolk; that the results on all these shipments were lower than the same product would bring in the South because of the fact that the Southern meats have not been handled in the North and West and both dealers and consumers were not familiar with them which enforced a heavier discount. That the best marketing

territory for such meats is what is ordinarily called the peanut belt of the Southeast, where the hogs are raised.

That Mr. H. L. Hovey, Jr., was in charge of the Sales Department of the Moultrie plant and has devoted his energies in building up of selling outlets and assisting the wit-
1278 ness in keeping in touch with these agencies; he also covers various territories periodically.

That the witness has been over the territories with the managers and salesmen for the respective branch houses of Swift & Company and that from his experience while traveling around with these men he would say that they were trying to sell the Moultrie product—were constantly making every effort to find a market for those products, but are up against disinclination of the trade—dealers—to handle this product except at a heavy discount under Western meats, and that many of the dealers refused absolutely to handle Southern meats at any price. That soft and oily hogs were purchased on the market at from one to two cents per pound under the price on the Western market of hogs of the same weight, and that a premium of one cent per pound was paid to producers of hard hogs in this section.

That the witness had worked with the farmers of this State in conjunction with representatives of the Georgia State College of Agriculture, representatives of the State Department of Agriculture, representatives of the Farm Bureau, county agents in the various counties in which hogs were purchased, and the respective Chambers of Commerce of the several counties.

Identified pamphlet entitled "Grow Hogs in the South" and stated that it was one of the pamphlets which had been put out by Swift & Company to encourage the production of live stock and particularly a better class of hogs; also stated the pamphlet was first issued in 1920. The pamphlet
1279 was offered and received in evidence and marked "Respondent's Exhibit No. 14."

Identified another pamphlet entitled "Grow Hogs in the South" which indicated it was issued in 1919. This pamphlet was offered and received in evidence marked "Respondent's Exhibit No. 15."

Identified another pamphlet entitled "The Two Crop Hog Plan for Southwest Georgia, by S. C. Hood," which indicated it was issued in the year 1919. This pamphlet was offered and received in evidence and marked "Respondent's Exhibit No. 16."

Identified a document entitled "1920 Hog Feeding Experiments, conducted by Georgia State College of Agriculture, Division of Animal Husbandry, Athens, Georgia, Swift & Company, Moultrie, Georgia, Cooperating." This document was offered and received in evidence and marked "Respondent's Exhibit No. 17."

Witness stated that the four pamphlets referred to were distributed by Swift & Company direct to the live stock raisers of the southeast in their buying territory, also through the county agents in all the counties in the same territory, through the respective Chambers of Commerce in the same counties, and through the Georgia State College of Agriculture, and through the leading bankers of each of the different counties.

That it was the policy of Swift & Company, followed constantly, to operate this plant up to its total capacity; that in endeavoring to do so they try to buy sufficient live stock to accomplish that purpose; that they having a buying department in which they employ all the way from two to five
1280 buyers, the number of buyers fluctuating with the seasons and the available supply of live stock; that eighty-five per cent of the live stock is received through so-called live stock shippers, meaning by that carload shippers in the plant's buying territory; that there were about seventy of these shippers; that they tried to keep in constant touch with live stock shippers through letters or by 'phone; that when a sufficient supply of live stock from these shippers is not received the plant sends its buyers out into the buying territory. That in addition, the plant receives shipments of live stock from points within a radius of twenty-five miles from what has been designated as "hog rustlers," men who gather up smaller quantities of hogs and haul them to the plant by truck. That practically all the live stock from Colquitt County that is marketed by Moultrie is driven in by truck and does not come in in carload lots; that in addition to the foregoing, they keep in touch with the live stock markets in Jacksonville, Nashville, Montgomery and Alabama, and whenever the opportunity offers they buy live stock on those markets and have it shipped to Moultrie.

That when the witness first came to Moultrie the buyers operated within a radius of one hundred miles; that since that time and particularly during the year 1920 and so far in the year 1921, the buyers covered a much wider territory —much larger territory, because of the scarcity of live stock.

That the plant sought to increase its killing by covering more territory; that outside of purchases on the recognized
1281 live stock markets, the buyers covering the following territory: Macon on the North, Savannah on the East, Jacksonville on the Southeast, Tampa on the South, Applilachicola on the Southwest and the Alabama line on the West; that a line running East and West through Macon would be the Northern boundry.

That with reference to the Montgomery buyer, they had received a wire from him every day for the past sixty days stating that no hogs were there; that previous to that time they purchased a great many hogs in the Montgomery market; that they frequently buy hogs and cattle on the Jacksonville market.

That the Atlanta market furnished the plant practically no hogs but they did buy an occasional car of cattle on that market.

That with regard to the Nashville market—they bought on that market whenever the price was such that they could afford to buy, but during the past sixty days they have continuously endeavored to purchase carload lots of hogs on the Nashville market and have been unable to secure any as the commission men said they did not have hogs to spare after filling their own orders.

That it was the general opinion of those experienced in the packing house and live stock businesses that it is unprofitable both to the shipper and the packing plant to transport hogs a longer distance than they would be transported within a period of thirty-six hours; that in the South where they had slow train service it was considered unprofitable to try to ship hogs more than 250 miles; that cattle can
1282 be shipped longer distances than that without much chance of heavy mortality in transportation, but the shrinkage is so great that it is unprofitable to ship them from a distance more than 250 miles.

That while the witness says the foregoing is the opinion of others, it is his opinion also.

That by the term "pig" it is usually meant a young hog or lean hog—weighing anything less than packer weights of hogs; that as a general thing, packers do not cut up any hogs into cuts which weigh less than one hundred fifty pounds live weight, so that anything under that weight would be designated as a "pig." That in other words a "pig" was a young hog which had not yet reached maturity.

That the policy of the Company was to discourage in every way possible the sale of pigs by the farmer because they believed that the farmer was losing a part of his potential profit by marketing his hogs before they reached the packer weights and also through their desire to have him make as much profit as possible in the raising of hogs. That the Moultrie plant was constantly forced to buy pigs as they were mixed in with the hogs received in carload lots; that those pigs were graded and thrifty ones picked out—the ones that would make good feeders and would show quick gain if fed, and endeavored to sell those pigs back to the farmer; that that was the constant policy—to sell back all thrifty pigs to the farmers; that they were sold back to the farmers at cost, or even less if they were unable to get cost. That the
1283 same policy with reference to putting pigs back on the farms to be finished also extends to any good calves or cattle, both heifers and bulls which are thought to be good enough for breeding stock; that frequently the plant has held cattle in its yards for as long as thirty or sixty days while an effort was made to find purchasers for them; that ever since the witness had been at Moultrie, he noted a decrease in the available live stock in the buying territory; that he first noted it late in 1919 or early in 1920.

That he thought it would materially increase the Company's chance of buying more live stock to have a public competitive live stock yards located at Moultrie; that he consulted with the officials of his company and secured their approval; that he then approached the local people and told them that Swift & Company would like to see a competitive public stock yards established at Moultrie because they believed it would center in the Moultrie yards live stock from a greater radius than they could afford to cover in their buying operations; that if the undertaking was successful and a competitive market developed at Moultrie, it would act as a stimulus to production by giving the producers more than one bid; that at various meetings with individuals and groups of individuals he convinced them that it would be a good move for Moultrie to make, and when they agreed to take it up he dropped out of it because his company could not own any stock in the Stock yards company; that Swift & Company do not own any part of the stock yards company.

1284 That the killing capacity of the Moultrie plant was nine thousand hogs per week, taking into consideration

operation for six days per week and ten hours per day; that the killing capacity of a plant must be backed up with cooling capacity to take care of the live stock slaughtered; that if a plant could slaughter nine thousand hogs per week, that means it must have a cooler for chilling eighteen thousand hogs because the hogs will not cut until they have been chilled for forty-eight hours; that it is considered unsafe to do so. Also that the chilling capacity must be backed up by freezer capacity or by curing capacity because as soon as the hogs are cut up into the various products the products must be put in cure immediately or be frozen. That when the witness said the killing capacity of the plant was nine thousand hogs per week, he meant that the plant could slaughter that many hogs in a week and take care of the products in the regular course of handling through the various parts of the plant and provided also that it was killing hogs only. That if cattle, sheep or calves were killed along with the hogs in any quantity, that would reduce the capacity for hog killing or rather hog chilling; that the reduction would be in proportion to the number of cattle slaughtered. That the killing capacity of the Moultrie plant is now rated as follows:

950 hogs and 250 cattle each day
Cellar and curing capacity—5,000,000 lbs.
Freezer holding capacity—1,700,000 lbs.
Smoked meat department—100,000 lbs. per week.
Power house—350 horsepower.

1285 Welfare building, meaning the building containing the lockers, shower baths for employees, capacity, 450 people.

1286 put in evidence, such document will not be filed, but a copy only of such material and relevant matter shall be filed?"

Examiner Sadler: Recess until two o'clock.

(Whereupon at 1:00 o'clock P. M., July 12, 1921, a recess was taken until 2:00 o'clock P. M. of the same day.)

After Recess.

2:00 o'clock P. M., July 12, 1921.

Examiner Sadler: The hearing will come to order. As to the admissibility of Respondent's Exhibit B-3 for identifica-

tion, I will rule that Mr. Taylor's objections will be sustained, and I suggest to Mr. Horton that if he considers this ruling unfair to his interests, that he make application to the Commission. In my mind this exhibit is irrelevant and incompetent to the issues in this case.

Mr. Horton: Now, Mr. Examiner, let me get this clear. Are you objecting to the exhibit because it is an exhibit? Do you wish the records themselves introduced in evidence? If so, I will offer them.

Mr. Taylor: Mr. Examiner, it does not seem to me that it is quite fair to call upon the Examiner to specify the character of proof that either party shall offer. The Examiner rules upon evidence when it is offered; it seems to me that he is doing all that can fairly be expected of him.

Mr. Horton: Mr. Examiner, I offer in evidence the two large books which the witness Smith has before him,
1287 which are the periodical statements of the operation of the Moultrie plant, from July 1st, 1917, through and including June 1st, 1921.

Mr. Taylor: Is it understood that the exhibits which are now offered are the same books, the departmental statements, regarding which I questioned Mr. McDowell this morning?

Mr. Horton: Yes sir, identically.

Mr. Taylor: I make the same objections to these that I did to the statement which was offered.

Examiner Sadler: The objections will be sustained.

Mr. Horton: What is the ground of your objection specifically, Mr. Taylor?

Mr. Taylor: I make the same objection I made to the statement, it is incompetent and it is irrelevant; the books are not books of original entry; they are mere compilations and summaries of material gathered from other sources not disclosed; they are wholly irrelevant to the issues in this case, for the reasons which I specified with regard to the other exhibit, B-3 for identification, which was offered this morning.

Mr. Horton: To meet your objection that these are records compiled from sources which are not disclosed, I will say to you that we offered to produce here records which will follow out each transaction in the minutest detail, and will take you clear back to the sources of the entries. You understand that these records are very voluminous and would re-

quire perhaps a truck to transport them here, but never-
1288 theless they shall be here if you request it, if you evince the slightest inclination to see them.

Mr. Taylor: How long a time would it take to examine this truck load of books, Mr. Horton?

Mr. Horton: I do not know.

Mr. Taylor: How long would it take an expert accountant to go through this truck load of books?

Mr. Horton: I do not know.

Mr. Taylor: I have only formulated my objections as to the exhibits which are offered.

Mr. Horton: As far as your objection is concerned with regard to the books not being books of original entry, the witness Smith has testified in substance that they are books of original entry, that they are made in the usual and ordinary course of business; they are part of the permanent records, that the entries made therein were made at or about the time which they purport to show on their face. I know of no other way by which records can be identified more accurately.

Mr. Taylor: You must also take into consideration the facts brought out on cross-examination in regard to the description of the books.

Mr. Horton: I don't see that any fact was brought out on cross-examination that shows that these books were not true and correct regards of the several transactions that took place in.

1289 MR. C. L. BROOKS was called as a witness on behalf of respondent, and after being first duly sworn, testified in substance as follows (pp. 3066-3152):

Direct Examination.

That he lived in Moultrie, Georgia; that his business was that of a designer and operator of packing plants; that he designed the plant of the Moultrie Packing Company, built it, superintended the construction, and was manager of the plant; that in 1913 he was living in Minnesota and was requested by a committee of citizens to come to Moultrie and tell them about a packing house, what a packing house would do and what benefit the country would receive from it; that

when he first came to Moultrie, Mr. J. W. Grier, secretary of the Chamber of Commerce, took him around and introduced him to part of the members of the Chamber of Commerce; that they had a meeting in July 1913 and he then told the Chamber of Commerce what a packing house would do and what it would cost to build one. That the purpose of having a packing house down here, the object they were trying to accomplish was that they were trying to promote a live stock market, or a market for anything else but cotton, to keep the country from going bankrupt. That the country was going bankrupt on account of the boll weevil which was working its way into this section, which had ruined their cotton, and they had to get into something besides cotton.

That the people of Moultrie and the Committee signed
1290 up for about $75,000; that the witness suggested that they do not go any further until they sent a committee of three or five business men out west to see what a packing house meant, what it took to run it, and a committee went to Minnesota about September, 1913. That the witness took them through the plant at Albert Lee, Minnesota, then through the plant at Austin, Minnesota; that on the way back they stopped at two or three places in Chicago; that they then went back to Moultrie, organized a company; that they wired the witness to come down to Moultrie; that he arrived about January 1, 1914; that they had their company organized, with Mr. W. C. Vereen, president; Mr. Barber, vice-President; Mr. Grier, Secretary; Mr. R. Morrison, treasurer; and a full board of directors. That the witness designed the building, let the contract, and also superintended the construction; that witness was a stockholder and attended stockholders' meetings; that at the first meeting witness told them they need not expect this plant to pay any dividend from three to five years; if then, that they would get their dividend indirectly, through the development of the country; that this plant was liable to run at a loss the first two or three years, but would make money for the people indirectly, by encouraging the live stock and promoting a live stock industry in the south and developing the land. That the witness was familiar with the plant from start to finish and was connected with the plant all the time it was operated as the

Moultrie Packing Company; that in his opinion at that
1291 time it would be almost impossible to get any outside packer to come in a town this size, a town not any better advertised or known than Moultrie was at that time.

That witness had been in the packing business since 1882 and through all phases and all departments—from office boy to the top; that it was impossible to get a packer from the West to come in here because if a packer were looking for a location in the South, they would never pick a town the size of Moultrie, they would come into a town like Birmingham, Atlanta, Macon, Jacksonville, Savannah, some town where they knew they had an outlet for a certain percent of their fresh product in the local market.

That the packer gets his raw material wherever the hogs are raised; that the situation with reference to hogs and cattle being raised in the section around Moultrie at that time was that they got into the hog business quicker than any other part of the state; that this section was adapted for live stock; that before the packing house was built there were quite a few hogs in here; that Brooks county was noted all over the country for raising live stock.

That there was not enough hogs in this community at that time to attract a large packer here; that the basis of development of the packing business is to get the live stock first; and it would be impossible to get the live stock if you didn't have a plant here.

Q. What was the basis of development before it would attract a large packer?

1292 A. Is to get the live stock first. It would be impossible to get the live stock if you didn't have a plant here; so the local people built it on that account.

Q. And, as I understand it, the object first was to build the plant and then build up the live stock production to give the plant something to run on?

A. Something to run on.

Q. Now, do you know whether the people that built this place, this plant, intended to remain in the business permanently?

A. Mr. Taylor: I object to that, Mr. Examiner, irrelevant.

Examiner Sadler: The objection will be noted.

A. At the time they were organizing this company, when I was down here first, it looked like some of them were a little bit scared; I told them if they built the plant and done the business, raised the live stock, and could show the packers in the west or the east that they could raise live stock down here, that there would be no question but what some of

the other packers would buy this plant before it was in operation three years.

Q. Was that the basis upon which they went into this enterprise?

A. I think some of them.

Mr. Taylor: That is objected to, Mr. Examiner, as calling for hearsay evidence, speculative guesses, furthermore it is irrelevant to the issues of the case.

Examiner Sadler: The objection will be noted.

Mr. Taylor: No foundation laid for any such answer
1293 as the question calls for.

Examiner Sadler: The objection will be noted.

Q. Mr. Brooks, tell us more fully, if you can, the basis upon which the people of this community went into the enterprise?

Mr. Taylor: I object to that as immaterial.

Examiner Sadler: The objection will be noted.

A. Why, the most of the stockholders that went into this plant went into it with the intention of promoting the live stock industry in this section, create a market for live stock, which would give them a market for their feed stuff at the same time; that was the biggest intention.

Q. Now, was that ideal realized, was it accomplished?

A. Yes.

That when the plant started they killed something like 18,000 hogs the first six or seven months, that is, from December 14th up until August or September; that the next year the plant had more hogs than it could take care of; that it was swamped during the months of November, December, January and February; that they had to send quite a few hogs back which the plant could not handle; that the plant was also choked the first year Swift & Company had it; that they could not take care of the hogs offered to them and that would be in the months of November and December, 1917 and January, 1918. That at the same time the other plants in the country were blocked. That Swift & Company enlarged the plant to take care of the increase in hogs for the next

year; that they built on several coolers, a lot of freez-
1294 ers, new tank house, new engine room and boiler room, and in fact increased the whole plant in proportion to practically triple the capacity over what it was when the Moultrie Company owned it. That he knew the Moultrie Packing Company never paid a dividend; that he thought the capital invested in the Moultrie plant by the Moultrie

Packing Company was $153,000; that the Moultrie Packing Company had borrowed considerable sums to operate on; that they borrowed as high as $450,000 at one time during the Winter season; that that was not borrowed on the sole security of the stock of the Moultrie Packing Company, it was borrowed on the endorsement of the directors of the company. That he was manager of the plant from the time it started to operate until November, 1917; that he ceased active connection with the plant November 8, 1917; that he was active between the time Swift & Company bought the stock, June 1917, and the 8th of November, 1917; that he was at the plant every day and took an active part in running the business; that he was at the time of the testifying manager of the stock yards and also connected with the Moultrie Creamery Company, and with his own business, the Brooks Engineering Company and the Moultrie Construction Company. That the stock yards were organized at Moultrie the last year (1920) in September and opened upon the 6th of November; that the function of the stock yards was for the purpose of creating another market here, to give the shippers and the farmers and stock raisers a competitive market. That Swift &
Company does not own any of the stock, nor has it any
1295 interest in the stock yards company; that it does own
the land upon which the stock yards is built and has given the stock yards company a lease of said land and the privilege of buying it inside of three years at a price set the day the contract was signed; that that land was the best location the stock yards company could get. That Swift & Company have tried to give the stock yards company all the business they possibly could; that they have never thrown any obstacles in the way of the stock yards company and have supported it as much as they could. That Mr. McDowell, manager of the Moultrie plant of Swift & Company was the first man it was taken up with before anything was done; that he was very much enthused over it and thought it would be a good thing for everybody in this section of the country; that he thought the farmers wuld be better satisfied—better than having one market. That he was familiar in a general way with the market prices at the Moultrie yards and the market prices that are being paid in Chicago and other live stock centers; that he was also familiar with prices paid for live stock at the time he was manager of the Moultrie plant, and at that same time was familiar with market prices paid in Chicago and other places. That with regard to the time

the live stock comes to market here—it starts in October, heaviest runs are in November, December, January and February, and eases off for March, April and May; June it gets down to practically nothing, and in July it is pretty nearly dead; August a few come in again; September picks
1296 up a little and October generally gets a full run. That seventy-five or eighty per cent of the live stock comes to market between October and March; it was that way in 1915, 1916, 1917 and up to the present time. That the hogs on the Moultrie market sold for lower prices than the hogs of the same weight on the Chicago market; that in the language of the market, this difference is called the "spread"; that the witness is familiar with prices paid in the local market and the Chicago market since the stock yards started up, since November 6, last; that since the stock yards started up the price paid on the local market has been half a cent to two cents under the Chicago market; that in the days when the Moultrie Packing Company were operating the plant, prices paid were from one and one-half cents to three cents under the Chicago market; that in giving this testimony he was not referring to the top hogs of Chicago market, but to the "bulk of the sales", which is the market; that at Chicago there would be special lots of hogs which somebody would want and pay a premium to get; that there were sometimes hogs on the Moultrie market for which there was special demand; for instance, light pigs for feeding purposes which are put out on the farms for feeders. That was true when the old Moultrie Packing Company ran the plant, and also when Swift ran it; that both Swift & Company and the stock yards company have bought feeder hogs and put them out on the farms; that they were put out to educate the boys, and a certain grade was picked which would grow fast; that several carloads were purchased and a premium was
1297 paid for those feeders; that the premium was two cents above the Chicago market. That the object of starting the pig clubs was to keep the light hogs in this section of the country—to get more hogs here and get the hogs started back in this country again. That on account of the price of cotton going up to forty cents, farmers were getting out of the hog industry. No charge was made for the worked involved, the veterinarians inoculated the hogs free of charge, and the stock yards handled them without charge for yardage or feed. That the old Moultrie plant in the months of June, July and August, when they were not getting many hogs,

paid practically the same price locally as was paid by the Chicago market.

That when Swift & Company bought the plant, Mr. Swift was here; that he said he wanted the plant run along the same lines that it had run until he got ready to make any changes that he wanted to make; that he wanted witness to stay here until the organization was all here and able to take hold of the house; that he ran the plant along the lines previously adopted by him; that he never received any dictation from Chicago as to what prices to make on the products or prices to be paid for live stock; that they had to send a telegram every night to tell the number of hogs and cattle purchased and the average price for the day; that he did not know Swift & Company ever tried to restrain or suppress competition in any way, during the time he was there, and if it had been done, he thought he would have known about it.

1298 That he knew Sam Smith of Jacksonville, Florida; that Sam Smith came to Moultrie in July, 1917, and asked if the plant had been sold to Swift & Company; that when Smith was informed that the plant had been sold to Swift & Company Smith said that he would not work for Swift. That he was familiar with the business that Sam Smith did while Smith was acting as a broker for the Moultrie Packing Company at Jacksonville; that at times Smith was good and that at other times he would drop the price of the products too low and witness would have to call him on the 'phone or wire him to get his prices up; that that would happen probably three or four times a month. That the witness was familiar with marketing product through a branch house and also through a broker; that he prefers to sell through a branch house.

That with regard to Mr. Stanaland representing the Moultrie Packing Company in Atlanta and Mr. Sam Smith representing it in Jacksonville, the product was shipped in carload lots; that there is some stuff returned and some stuff that is odds and ends that has to be sold at less than the market. As an example, if a car got in on Friday it had to be all sold by Saturday; that if they didn't get through by Saturday noon they would have to lower the prices to get rid of it; that in the trade that practice is called "clean-up" or "dumping ground." That it is not desirable to cut the price all over the city, so one dealer was picked to sell it to—generally had one man for that—didn't want to lower price all

over the city on the general market; that customer was
1299 called a "clean-up" man. Mr. Stanaland's "clean-up" man was the Sanitary Market Company; Mr. Smith's "clean-up" man was the Jeffries Market.

That the witness was familiar with the prices made by the Moultrie plant after Swift & Company bought the stock, while he was there; that those prices were not raised or lowered above or below the normal market value of the class of products the plant was selling; that they sold at the market; that at that time of the year it was generally raised a little, always do; that in the Summer of 1917 smoked meats, dry salt meats were going up and the price of hogs was going up.

That in the South he had built the following packing companies: One each at Moultrie, Ga., Waycross, Ga., Savannah, Ga., Tifton, Ga., Macon, Ga., Wilmington, N. C.; Chipley, Fla. That the enlargement of the plant by Swift & Company bettered the competitive live stock market by offering a market at all times, while under the old company embargoes were placed upon the receipt of hogs at various times; that the enlargement of the plant removed the necessity for the embargoes and saved the farmers possibly a dollar a hundred on their hogs; that if the packing house carries hogs overnight and there is a big shrinkage, and the death loss that they have to take care of which they necessarily had to charge to the live stock, that is, that was what the Moultrie Packing Company did.

1300 *Cross-Examination.*

That when he started the Moultrie plant he slaughtered hogs principally, which he bought within a radius of 75 to 100 miles of Moultrie, including towns in Alabama and Georgia. That he sold the pork products from these hogs as much as he could locally, also in Jacksonville, Savannah, Macon, Atlanta, Birmingham, and all towns of any size in that section. That he sold some lard in Chicago and New York and some hams in Jersey City.

That he sold to brokers in Atlanta, Jacksonville, Savannah, Macon, Augusta and Birmingham, and that he had two or three brokers working out of the house selling in the towns of Thomasville, Cordele, Bainbridge, Tifton, Valdosta and Quitman, and that was the situation when the stock of the Andalusia Packing Company was purchased by Swift & Company. That at that time Mr. C. H. Wallow came down from

Chicago as auditor in charge of the office, and Mr. Frank Luchsinger came down as Assistant Manager of the plant; that witness was the Manager of the plant. That Mr. Luchsinger and Mr. Wallow came to Moultrie about June 15, 1917. That Mr. Luchsinger was correct when he testified that he looked after recommendations on change in construction and organization of the sales force; in other words putting in Swift & Company's system throughout the plant.

1301 (By Mr. Taylor) Q. Now during this time that you were still there Stanaland was discharged in Atlanta, was he not, as broker?

A. I think he resigned; I could not say that for sure, I think he resigned because he was figuring on taking over the Tifton plant account and he was to get his new place with ice boxes there.

Q. Is it not a fact that he was written a letter by Moultrie Packing Company discharging him, and it was not until after he was discharged that any negotiations were opened up for taking over the account of the Tifton plant?

A. I think that Swift & Company offered him a job in Atlanta with the branch house, if I am not mistaken in that letter.

Q. I show you Commission's Exhibit 69 and ask you to read it and then answer the question which I last asked you.

A. This is October 22nd.

Q. And now will you please repeat the question?

A. I didn't know anything about him receiving a letter like that; it was along about the time I left Swift when they made arrangements—it was along about November 8th, I think, or along about that time.

Q. This letter of October 22nd was written by Mr. Luchsinger, was it not? I call your attention to the initials.

A. Yes, that is it.

1302 Q. How long was it before discharging Stanaland in Atlanta that Swift began selling pork through the branch house there, do you recall?

A. Well, I was with them up until November 8th; we were shipping Stanaland up until very close to that time; right direct from the house to Stanaland.

Q. You did not ship to Stanaland after this letter of October 22nd, did you?

A. Well, it would be right along about that time, I guess, when we stopped; I left the employ of Swift about November 8th.

Q. Now, the question is when did you start shipping your product to the branch house at Atlanta, how long before Stanaland was discharged?

A. I suppose it must have been a week or two; that is, they got a little stuff there right along, whenever they wanted anything they would wire the house and we would ship it to them, from this house here.

Q. May have been considerably more than a week or two, might it not?

A. Oh, they might have gotten some stuff right away, when we first started, when they ran short we would ship it to them.

Q. As a matter of fact, you had instructions, didn't you, to sell as much as you could through all of these branch houses from the time Swift acquired the stock?

1303 A. No, we had no instructions from Chicago that I seen; they said go on handling it as we was handling it.

Q. So you proceeded to discharge the brokers and sell through the branch house, was that the way you carried out those instructions?

A. I should say that was after I left there.

Q. No, you left there in November?

A. November 8th.

Q. You wrote to Stanaland discharging him on October 22nd. Now, I show you here Commission's Exhibit 107, copy of letter written by Stanaland to the Moultrie Packing Company, nine days before this letter was sent to him, discharging him, and ask you to read it and see if it refreshes your recollection on the handling of this product by the Atlanta branch house?

A. I remember that; he called me on that.

Q. Who called you?

A. Stanaland.

Q. You mean called you on the telephone?

A. On the phone, we got hold of the branch house right after that.

Q. Yes?

A. And got them in line with Stanaland, got them both together.

Q. Well, what influence did the Moultrie Packing Company have over the branch house?

1304 A. The Moultrie Packing Company—not the branch house, Swift's branch house in Atlanta or Macon, wherever they bought any of this stuff, they paid for it, we would

bill it to them the same as we would bill it to a customer; for instance, Stanaland would be handling five hundred pounds of loins, the branch house might order two or three thousand pounds, to fill some special order or cut in on the trade, we would bill it to them, and if they sold under that the branch house would have to stand the loss.

Q. The branch house had the right to sell at any price, any price they saw fit, didn't it?

A. The branch house had the right to sell at any price they saw fit, after they bought it.

Q. But you say you called up the branch house and got them in line, got them to promise to sell at the same price that Stanaland was selling?

A. No, I believe I called them up and told them to go and see Stanaland; Stanaland was right on 31 cents.

Q. Now, what is your recollection as to what happened?

A. I don't know, I don't remember.

Q. I show you Commission's Exhibit 108 and ask you to read that and see if it refreshes your recollection? Did you talk with the branch house again after getting that letter?

A. I don't remember this, don't remember seeing that one at all.

Q. Instead of taking the matter up again with the
1305 branch house you simply discharged Stanaland, didn't you?

A. I didn't discharge him.

Q. At least Mr. Luchsinger did, your assistant?

A. Well, he was going to leave anyway, Luchsinger knew it.

Q. Who said he was going to leave?

A. I think they all know about it.

(By Mr. Horton) Q. He had a right to discharge him if he wanted to didn't he, Mr. Brooks?

Mr. Taylor: I move to strike out the statement, "he was going to leave anyway, as not responsive to any question, a voluntary statement, contrary to all the testimony.

That the business was built up very rapidly, at various points he had brokers including Atlanta; that they picked up a trade fast in all those cities for their new plant; that they had their trade in good shape by the fall of 1915 and continued to grow right along through their brokers.

That the only places they could find a market for Moultrie products was in cities where other packers were selling; that the packers were represented in every city in the south

and they had to go to those cities or they would not be able to sell any products. That Swift sold products in Moul-
1306 trie in competition with the Moultrie Packing Company.

Swift & Company was not the first that figured on buying the plant. Armour was first and then Wilson. The amount of stuff we sold, I don't think bothered the packers any, not very much.

That all of the benefits which have come to Moultrie from the enlargement of the Moultrie Packing plant by Swift & Company would have come from the enlargement of the plant by any one; that as a matter of fact there are plans afoot in that section of the state for opening up, building and enlarging of plants for the killing of hogs.

Redirect Examination.

The supply of hogs around Moultrie is less now than it was in 1916 and 1917. That the high price of cotton caused the people to raise more cotton and less hogs; also there are more people in here to buy them now; that orders come to the stock yards from Cuba, St. Louis, Chicago, Cincinnati, Jacksonville, Birmingham, Atlanta, Montgomery and New Orleans.

Recross-Examination.

That in 1919 the plants at Macon and Tifton and Savannah were competing for the hogs in this market; that there were fewer hogs in this territory in 1920 than there were in 1917; that in his opinion it would run thirty per cent less, possibly a little more.

1307 A. It is essential to the handling of live stock profitably by the producer that he have a nearby market for his live stock.

Mr. Taylor: Now, I move to strike this out as a conclusion, of the witness, speculative, immaterial to the issues of this case.

Examiner Sadler: The motion to strike will be noted.

Q. What has Swift & Company done along that line here in Moultrie?

Mr. Taylor: I object to that as immaterial.

Examiner Sadler: The objection will be sustained.

Mr. Horton: May I ask upon what grounds?

Examiner Sadler: Irrelevant to the issues of the case.

Q. I will ask you to state in what way you have endeavored to build up better live stock, better grade, better quality, in this section of the community?

Mr. Taylor: I object to that as irrelevant and immaterial.

Examiner Sadler: The objection will be sustained.

Q. Mr. McDowell, I will ask you if you are in absolute charge of Swift & Company's business in this section of the community?

A. I am.

Q. I will ask you if you have knowledge of what Swift & Company is doing in this section of the community?

A. Yes.

Q. I will ask you if you are in complete possession of
1308 all the facts relating to different plants that Swift & Company may have directed toward live stock production in this country?

Mr. Taylor: That is objected to as calling for a conclusion of the witness, Mr. Examiner; how can he know what is passing in the minds of the heads of Swift & Company in Chicago; some of the things that they have in mind they may transmit to him, but he cannot say that they have all of the things; it would be necessary for him to be a mind reader to qualify him to answer that question correctly.

Examiner Sadler: The objection will be noted.

Mr. Horton: Read the question.

(Question read)

A. I am.

Q. Now, is it not true that you were consulted, your advice was asked, before any move is made down here?

A. Yes sir.

Q. Isn't it true that no move is made unless it is through you?

A. Yes sir.

Mr. Taylor: Now, Mr. Examiner, I must object to these questions as leading. I move to strike out the questions and answers.

Examiner Sadler: Motion to strike will be noted.

Q. Now, Mr. McDowell, I will ask you the question as to whether or not Swift & Company has endeavored to have the farmers here produce a better quality of hogs and a more even system of marketing?

1309 Mr. Taylor: I object to that as immaterial and irrelevant; calls for a conclusion; and as leading.

Examiner Sadler: The objection will be sustained.

Q. Mr. McDowell, I will ask you if the quality of the live stock produced in this section of the community has a direct bearing upon the number of pounds and the class of product that Swift & Company has been able to offer in the various markets through this section of the country?

Mr. Taylor: I object to that, immaterial and irrelevant, calls for a conclusion of the witness, and leading.

Examiner Sadler: The objection will be sustained.

Q. Mr. McDowell, what are the facts with regard to whether—with regard to whether a better quality of live stock and a more even marketing throughout the year will enable you to offer more meat in competition with other dealers?

Mr. Taylor: Just a minute; Mr. Stenographer, read that question to me, please.

(Question read)

Mr. Taylor: I object to that, Mr. Examiner, as irrelevant and immaterial to the issues in this case, and as calling for a conclusion of the witness; also as leading.

Examiner Sadler: The objection will be sustained.

Q. Mr. McDowell, please give us any facts which you may have that would show whether or not competition in this section and community, in the territory throughout the 1310 southeastern states, where you market your product, has been substantially lessened or restrained in this section and community, and throughout the same states?

A. During the period of which I have knowledge—

Mr. Taylor: Mr. Examiner, may I have an objection to this question as calling for a conclusion of the witness?

Examiner Sadler: Yes.

Q. (Continuing) Which would be from early in 1918, I can state that competition in the sale of packing house products in the vicinity of Moultrie and in the southeastern part of the states in which he had marketed Moultrie products, has materially increased.

Mr. Taylor: Now, Mr. Examiner, I move to strike out the answer as being a conclusion of the witness.

Examiner Sadler: Motion to strike will be noted.

Q. Now, please give us any facts in your possession which bear upon the part that Swift & Company has had in increasing this competition?

Mr. Taylor: I object to that as immaterial, and furthermore, for the reason that the issues in this case is simply the question of elimination of competition between the Moul-

trie Packing Company and Swift & Company; and other competition is irrelevant to the issues; and it is very apparent that this competition here referred to in the question, relates only to competition between Swift & Company and others than the Moultrie Packing Company.

1311 Examiner Sadler: The objection will be sustained.

Q. Now, Mr. McDowell, do you know in how many towns throughout the southeastern states Swift & Company has sold the Moultrie product?

A. Yes sir.

Q. Please state.

Mr. Taylor: I object to that as incompetent; the records are the best evidence.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Mr. Examiner, do I understand that the respondent is to be permitted to put in evidence by oral testimony here the information which can only be had by examining records, and that secondary evidence will be received, not the best evidence?

By Examiner Sadler: Q. Are the records available?

A. Yes sir.

By Mr. Horton: Q. First, let me ask you, Mr. McDowell, if you know of your own personal knowledge, if you have checked this matter up and refreshed your recollection?

A. I have.

Q. Do you feel that you are thoroughly posted upon this question?

A. I do.

By Mr. Taylor: Q. How did you check up on it, Mr.

1312 McDowell? By examining the records?

A. I examined the records of the sales made by the Moultrie plant, and I obtained the record of the number of towns handled by our branch houses through our head auditor of the southeastern district.

Q. And you now propose to testify as to your recollection of what is contained in these records?

A. I can do so, yes sir.

Q. Is that what you now propose to do?

A. Yes sir.

Mr. Taylor: I again object to the witness being permitted to give this character of evidence, Mr. Examiner.

By Mr. Horton: Q. I will ask you whether or not it is a fact that you counted these towns?

A. Yes sir.

Examiner Sadler: If the records are available I will sustain the objection.

Q. How many towns, Mr. McDowell, are there in which Swift & Company does business? That is, in which Swift & Company sells the Moultrie product?

Mr. Taylor: Mr. Examiner, I think the records will show that, too, and I therefore object to that answer on the same grounds.

Mr. Horton: I will state to you, Mr. Taylor, that I think that it is perfectly competent for this witness to testify
1313 as to the number of towns in which this product has been sold or offered for sale. The witness has stated that he knows. Now, if on cross examination you wish the records produced, and you wish to read into the record what those towns are, I have no objection; we will be glad to furnish you the records.

Mr. Taylor: Yes, Mr. Horton, but this is affirmative proof that you are now offering, and under the rules of evidence, the burden is on you to show by the best evidence available, it is not on me to search for the best evidence available after you have offered secondary evidence, and then by cross examination bring out any errors which may exist.

Mr. Horton: I don't agree with you that it is secondary evidence; this is the best evidence available. I know of no better way of proving a fact than to prove it from a witness who has knowledge of the fact.

Examiner Sadler: The records are available, aren't they?

Mr. Horton: Yes, the records are available; that is, they can be gotten together, at great trouble and expense; we will get them together if you insist upon it.

Examiner Sadler: The objection will be sustained.

Mr. Horton: Mr. Examiner, I wish to make a statement for the record: We offer to show by this witness that the Moultrie plant of Swift & Company has sold the product itself in 331 towns, that the branch houses of Swift & Company in the southeastern states, including Atlanta, Jack-
1314 sonville, Augusta, Columbus, Macon, Waycross, Savannah, Tamp, Miami, Florida, Nashville, Chattanooga, Knoxville, Tennessee; sold the product or offered it for sale in 1589 cities and towns. These figures do not include four branches of Swift & Company in the state of South Carolina; that as yet we have not received any information from those branches, but we hope to produce it before this hearing closes.

1315 Examiner Sadler: The objection will be sustained, yes.

Mr. Horton: Mr Examiner, I would like to make a statement for the record. We offer to prove by this witness that the witness has worked with the farmers, worked with the agencies mentioned for the purpose of teaching the farmers how to raise hogs profitably. We also offer to prove by the witness that unless the farmer is shown how to raise hogs and how to care for and feed them, that the probabilities are that he will not do it at a profit, and he will become discouraged and will quit the live stock business, to the detriment of himself and the community at large.

Mr. Taylor: All of which, Mr. Examiner, I submit is entirely outside of the issues in this case.

Examiner Sadler: Recess until two o'clock.

(Whereupon, at 12:00 o'clock M., a recess was taken until 2:00 o'clock P. M.)

2:00 P. M.

After Recess

Examiner Sadler: The hearing will come to order. Regarding the request of Messrs. Mill & Gibson to examine witnesses, I will state that the privilege will be allowed.

Mr. Taylor: Mr. Examiner, I would like to ask in what capacity? Is it to be understood that Mr. Hill's firm appears here as counsel for the Chamber of Commerce, or as assistant counsel for Swift & Company?

Examiner Sadler: Associate counsel for Swift & Company.

1316 Mr. Taylor: Associate, I meant to say, of course.

Mr. Horton: Mr. Examiner, it might be well if you would show us just what instructions have been received in this case, let the record show it.

Examiner Sadler: Well, I have got some confidential instructions on this; I would rather not place them in the record at this time; I consider them confidential.

Mr. Horton: Do your instructions state with any certainty, as to whether or not Messrs. Hill & Gibson are appearing for the Chamber of Commerce or for the respondent?

Examiner Sadler: I said that they would be associated with the respondent; I think that was the wording of the telegram sent to the Commission asking that the privilege

be allowed, if they were associated with counsel for the respondent. I think your acquiesced in their request?

Mr. Horton: I have acquiesced in that request, but it is with the understanding that the Commission had made a definite ruling that they should not be allowed to appear for the Moultrie Chamber of Commerce. As I understand it, that was their first request, and the telegram you sent to the Commission asking for instructions asked for specific instructions upon those two points.

Examiner Sadler: Well, they come back they would be associated with counsel for the respondent, Swift & Company.

Mr. Horton: In order to clear this whole matter up, I
1317 suggest that we offer in evidence a copy of the petition filed by the Chamber of Commerce, to be attached to the record as an exhibit in the case. I accordingly offer a copy of the petition filed. There seems to be some confusion here as to whether Messrs. Hill & Gibson are appearing for the Chamber of Commerce or for the respondent.

Mr. Taylor: I object to this as an exhibit, as it is not evidence of anything except that Hill & Gibson prepared a petition to apply to intervene. I think it is an understood fact, the telegram submitted here by Mr. Gibson show it to be a fact, that they actually did make application to intervene, and that application has been denied, therefore this petition is irrelevant in the matter wholly; it is no evidence of anything that is not already before the examiner. As I understand it, the examiner has just stated that he has instructions to the effect that Hill & Gibson can appear before him here and examine witnesses as associate counsel with the counsel for the respondent, which it was stated by Mr. Hill yesterday was all he desired to do.

Mr. Horton: In view of the fact that Messrs. Hill & Gibson have received three telegrams from the Federal Trade Commission relative to their appearing in behalf of the Chamber of Commerce, it is not clear yet whether they are appearing for the Chamber of Commerce or not, or what the intention of the Commission is in that respect. I suggest that
1318 Messrs. Hill & Gibson go ahead and introduce what testimony they see desirable, but the question of who they are acting for or who they are representing be left open until the matter can be presented to the Commission.

Mr. Taylor: Mr. Examiner, as I understand the matter has been presented to the Commission; the Commission has

stated definitely in what capacity Hill & Gibson may appear here.

Examiner Sadler: As attorneys associated with the respondent Swift, it has been definitely settled by the Commission.

Mr. Horton: Well, I am glad to be informed that it is definitely settled. By whom has it been definitely settled?

Examiner Sadler: By the Acting Chairman of the Federal Trade Commission.

Mr. Horton: I don't understand that to be the case; I don't know what the secret instructions have to do with it, confidential instructions; certainly from all the matters that appear out in the open, I cannot see that it is definitely settled. I am further unable to understand why there should be any secret about any instructions relative to conducting the case at this time.

Examiner Sadler: Well, I consider them confidential.

Mr. Horton: I am unable to understand why you consider them secret or confidential.

Examiner Sadler: Well, we wont have any argument on the record as to that.

1319 Mr. Taylor: Have we a ruling here on this offer of this petition in evidence?

Mr. Gibson: I will state this about the offer of this petition: One of these telegrams from the Commission states that by arrangement with Swift & Company the Chamber of Commerce can present such testimony as it desires in support of the petition, though not as a separate party. It might be well to have it in the record for the guidance of the examiner in knowing what testimony could be presented.

Mr. Taylor: Appropos of that, I would like to ask if the examiner has instructions as to the scope of the testimony which Hill & Gibson are to introduce here? I think it would be well to get that on the record, if so, so that there may be no misunderstanding, either by Hill & Gibson or by counsel for the Commission.

Examiner Sadler: In view of your question, I think I will read this telegram right into the record; then.

Mr. Taylor: I think counsel on both sides should know the instructions to the examiner as to the scope that this testimony is to be received upon, so that each may know exactly what its duties are in that respect.

Mr. Gibson: We thought perhaps you would rather have

this in the record as a matter for your own information, to know what the Chamber was seeking to present.

Examiner Sadler: I will read into the record a copy
1320 of the instructions I received from Washington, in answer to the telegram sent there yesterday. "Washington, D. C. July 12, 1921, Clarence T. Sadler; Examiner Federal Trade Commission, Moultrie, Georgia: You will permit Hill & Gibson as attorneys associated with respondent Swift to examine witnesses and adduce such evidence as they may desire relative to the alleged suppression of competition in Moultrie stop. Do not go into conditions elsewhere. Gaskell, Acting Chairman." You may proceed, gentlemen, along those lines.

Mr. Taylor: You have not ruled on this thing yet.

Examiner Sadler: In view of the telegram received, I do not consider the petition for intervention relevant to the issues of this case, therefore I will sustain Mr. Taylor's objection to it.

Mr. Gibson: I want this petition marked for identification.

Examiner Sadler: The petition will be marked "Respondant's Exhibit B-4 for identification."

(Whereupon the petition was marked "Respondent's Exhibit B-4 for identification."

R. A. STRATFORD was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Gibson.

Q. Mr. Stratford, in what work are you engaged?

A. I am county agent, representing the extension
1321 division of the Georgia State College of Agriculture, and the United States Department of Agriculture cooperating.

Q. How long have you been engaged in this work?

A. Since 1915 for the Government; prior to that time I was doing extension work in south Georgia for the Southern Railway Company.

Q. How long were you assigned to—located in south Georgia in that work?

A. From the 1st of January, 1913, until I believe it was the 1st of February, 1915, when I came here in the Government employ.

Q. In your agricultural extension work, have you any particular line that you specialize in or that is a hobby with you?

A. Well, my main lines of promotion in this county have been in the promotion of—in other words, a more extended live stock industry, to try to correct the fundamental errors being made by the producers, and in an effort to make the marketing more systematic throughout the year, as well as raise the standard of the product and also to increase the volume of live stock in the territory.

Q. How long have you been familiar with the live stock conditions generally in south Georgia?

A. Since 1913.

Q. Perhaps—prior to that—prior to the time that Swift & Company acquired the plant of the Moultrie Packing Company at Moul'rie, was Swift & Company a purchaser of 1322 live stock in this section of Georgia?

A. No sir, not that I know of.

Mr. Taylor: Mr. Examiner—just a minute—Mr. Examiner, I am wholly unable to see what all of this had to do with the alleged suppression of competition in Moultrie?

Mr. Gibson: There can be competition in commerce, in buying as well as in selling of the product. I think we will develop later that it had an effect on the selling also.

Mr. Taylor: What wa sthat statement counsel made

(Statement of Mr. Gibson read)

Mr. Taylor: What was that statement counsel made? suppression of competition in buying; the only competition that is specially mentioned in the complaint is in the selling.

Q. I will ask you this question, Mr. Stratford. Would competition in the buying of live stock have any bearing or relation to the competition in the selling of live stock products?

A. Well.

Mr. Taylor: I object to that; it is an opinion of the witness.

Examiner Sadler: The objection will be noted.

Q. Go ahead and answer it.

A. Prior to the opening of this plant here there was no sale for live stock at all in this territory; beyond the home supply and the butcher, you know. Now, this is a market for live stock.

Q. After this plant was opened, was Swift a buyer in this field?

A. No sir.

1323 Q. This territory?

A. No sir, they had no plants in this territory.

Mr. Taylor: Mr. Examiner, I would like to have an objection to that question, that is the same one I previously objected to, upon which I believe there was no ruling.

Examiner Sadler: The objections will be noted.

Q. Were you familiar with the live stock conditions under which—live stock conditions existing in this territory under which the Moultrie Packing Company operated?

A. Yes sir.

Q. What were they?

A. Well, at the time the plant was opened up here, we were producing live stock strictly under open range conditions. The open range still prevails in this territory, but a greater number of producers are keeping their live stock in pastures. The live stock industry was more or less haphazard back in those days.

Mr. Taylor: Now, Mr. Examiner, I move to strike that all out; it is not relevant to any of the issues of the case, and not within the scope of the instructions.

Examiner Sadler: Motion to strike will be sustained.

Mr. Gibson: I think its relevancy might be made to appear later on, when we connect it up.

Examiner Sadler: Well, we can consider its relevancy later on.

Mr. Gibson: If it is not connected up it can be

1324 stricken then.

Examiner Sadler: We can leave it stay the way it is until later on, at a later period.

Q. Were you familiar with the intention or purpose of the stockholders and promoters of the original packing plant here, the Moultrie Packing Company?

A. Yes sir, it was to afford a market for live stock.

Mr. Taylor: One minute, the answer to that question is yes or no.

A. Yes sir.

Q. I say, were you familiar with it, you can answer that yes or no.

A. Yes sir.

Q. What was the purpose, the idea of the promoters of that plant?

Mr. Taylor: Mr. Examiner, I object to that as immaterial to the question at issue here; I further object to it on the

ground that no foundation has been laid; we have nothing by which we can question the familiarity of this witness with those plants.

Examiner Sadler: The objection will be sustained.

Q. State, Mr. Stratford, what was your opportunity for knowing the purpose and intention of the stockholders and promoters?

A. From having worked on the territory and from having discussed the matter with the promoters and stockholders of the packing company.

Q. Did that come within the scope of your employ-
1325 ment here as county agent?

A. It was right in line with my work; we were seeking to defeat the bool weevil, and we needed money crops other than cotton to sustain our prosperity.

Q. Are you familiar, from those things, with the idea and purpose of the stockholders and promoters?

Mr. Taylor: I object to that as calling for a conclusion of the witness.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Also as leading.

Examiner Sadler: The objection will be noted.

Q. You can answer the question?

A. Yes, I was familiar with it.

Q. And from that source?

A. Yes sir.

Mr. Gibson: Q. I think that qualifies him to answer the question previously asked.

Mr. Taylor: I make the same objection that I previously made, Mr. Examiner, the same objections that I previously made.

Examiner Sadler: The objections will be sustained.

Mr. Gibson: May I ask on what grounds it is sustained?

Examiner Sadler: Read that testimony from the first question asked.

(Testimony read.)

Examiner Sadler: I think Mr. Taylor's objection
1326 covers your question.

Mr. Taylor: I might add, Mr. Examiner, that this whole answer sought to be elicited is hearsay; no opportunity to cross examine him as to who made the statements to this witness; does not even disclose the identity of the various persons who made the statements to him.

Mr. Gibson: Do the rules of the Commission require that the strict rules of evidence be followed in these hearings?

Examiner Sadler: That is in the discretion of the examiner.

Mr. Gibson: No direct ruling made on it by the Commission one way or the other? Well, I can prove those facts by other witnesses who I think would have a better opportunity for knowing and whose sources of knowledge could be cross examined.

Q. You say at the time that this plant was organized there was about to be a boll weevil invasion?

A. Yes sir.

Mr. Taylor: Well, now, Mr. Examiner, I must object to that question, and move to strike out the answer; it was made while I was objecting; I submit that this witness cannot say what the boll weevil was going to do.

Q. I will ask you, Mr. Stratford, what had he been doing?

Examiner Sadler: The motion to strike will be sustained.

A. The boll weevil was approaching very systematically, reached this county in 1915, early in August in 1915; his approach was accurately forecast by the Bureau of
1327 Etomology; they predicted when he would reach here.

Mr. Taylor: Now, I move to strike out this statement about predictions.

Mr. Gibson: You can strike that out.

Examiner Sadler: The motion to strike will be sustained.

Mr. Gibson: As to predictions, I presume?

Examiner Sadler: Yes, that is all he has asked for.

Q. Were you familiar with the sort of trail that the boll weevil had left from the Texas line as he progressed eastward?

A. Yes sir, the boll weevil had—

Mr. Taylor: I object to this as immaterial, irrelevant and immaterial.

Examiner Sadler: The objections will be sustained.

Q. What were the live stock conditions here under which the Moultrie Packing plant began operation?

A. We had had no commercial live stock industry up to that time; it was purely a matter of home supply; the hogs and cattle running on the open range.

Q. What was the effect upon the raising of live stock in this section caused by the operation of the Moultrie packing plant?

A. It caused—the breeders of hogs began more careful husbandary, they looked on it as a source of money.

Q. With particular respect to the number and size of the supply of hogs?

A. The census report shows an increase of some-
1328 thing over ten thousand hogs in the past ten years in this county.

Mr. Taylor: Now, Mr. Examiner, I move to strike that answer out as incompetent.

Examiner Sadler: The motion to strike will be noted.

Mr. Taylor: That is no way to prove censue reports. I also move to strike it out as not responsive to the question.

Examiner Sadler: Motion to strike will be noted.

Q. Were you here, Mr. Stratford, at the time the Moultrie Packing plant was operating, the first year or two?

A. I was here the first year they operated, yes sir.

Q. Were you familiar with its capacity and size?

A. Not exactly, no.

Q. I don't mean as an engineer, but generally, so as to know about what number of hogs it could take care of?

A. I was told at that time that they took care of—

Mr. Taylor: One minute, I object to what he was told.

Examiner Sadler: The objection will be noted.

Mr. Taylor: You mean to say that this witness can go on here and give hearsay evidence as to the capacity of this plant? If it is relevant to the issues here, why don't they have it proved by real evidence, not by what somebody told somebody else, or what somebody heard somebody else say about it?

Mr. Gibson: I don't insist on that; I don't intend to try to show the exact number of hogs it could kill per day or hour; I think there is an exhibit in the record that
1329 shows that all ready; the point I wanted to develop, Mr. Stratford, is the size of the plant before and after Swift acquired it.

A. Well, it has been enlarged since Swift acquired it; the plant is very much larger.

Mr. Taylor: Now, Mr. Examiner, I must submit that this is not the proper kind of evidence of that; Swift & Company has certainly got records showing what they did, that is the proper way to prove what they did; not what somebody saw or had been told was done.

Q. I will ask you now, before you answer that one, has the enlargement been of sufficient size as to be evident, and

visible to anyone, whether he be an expert or whether he has measured the size of the plant, before and after?

A. It is, yes sir.

Mr. Taylor: And the net result of your testimony is that there has been an enlargement since Swift & Company bought the stock of the plant?

Q. Yes sir. Has that enlargement been of any consequence?

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

Mr. Taylor: If it is material whether it is of any consequence, I submit the proper proof is what the enlargement has amounted to.

Q. Were you familiar with the old plant at the time its construction was completed?

1330 A. Yes sir, been all over it.

Q. What is that that you have before you?

A. This is a picture of the original Moultrie Packing Company, before Swift & Company bought it out.

Q. Are you familiar with that plant since Swift & Company acquired it?

A. I am familiar with it, yes sir.

Q. He has completed its enlargement?

A. Yes sir.

Q. What is the picture I now hand you?

A. This is a picture of the present plant of Swift & Company. I went all over both plants.

Q. Well, do you know that those are correct pictures?

A. Yes sir.

Mr. Gibson: I tender you these as exhibits, either now or later, as you prefer.

By Mr. Taylor: Q. Do you know the days when these respective photographs were taken?

A. No sir, I did not make these photographs.

Q. Were you present when they were made?

A. No sir, but I am thoroughly familiar with both plants; I recognized them instantly.

Mr. Taylor: Well, now, may I cross examine him as to these photographs, for the present?

1331 Mr. Gibson: Yes sir.

By Mr. Taylor: Q. Taking this photograph which I hand you now, which I presume was made earlier than the other photograph, and looking at that, can you state about when it was made?

A. Bout 1915.

Q. I will ask you what enables you to fix the date as 1915?

A. Because I recall that this was the appearance of the plant in 1915; this picture was made from the north side of the plant.

Q. And there is apparently lumber lying around, evidences of an incomplete state of the plant there, isn't there?

A. I see lumber in the picture, yes sir.

Q. Wasn't that plant completed in 1915?

A. It was a complete plant when I came here in 1915, yes sir, but the plant shows evidence of completeness here.

Q. Shows evidence of incompleteness, also, doesn't it?

A. I see no connection between the lumber and the plant.

Q. Do you want to have it understood on the record that you swear that that plant had no additions built onto it which do not appear in this picture, up to the year 1915?

A. None that I know of, I said about 1915.

Q. What do you mean by 1915, the beginning of 1915 or the end of 1915?

A. I recall that when I came here about the 1st of February, 1915, that this was the appearance of the plant.

1332 I was told by the people who opened up the plant that they had completed and began operations in either November or December of 1914.

Q. Were there any more additions made after you came here in 1915?

A. There was none made while I was here.

By Mr. Gibson: Q. That is, by the Moultrie Packing Company?

A. Yes sir.

By Mr. Taylor: Q. That is what I mean, before the sale of the stock to Swift & Company, in June 1917? Your answer is the same, that there were none?

A. There were none that I know of, no sir.

Q. No additions made? No improvements made?

A. There was no enlargements made, I will say there were no enlargements made.

Q. You have testified to an intimate knowledge of this plant, if you have such an intimate knowledge of the plant, I submit that you should not qualify your answer by "none that you know of," because if you have the intimate knowledge that you have claimed to have, why, you knew that there were no additions or improvements?

A. I will say there were no enlargements; they may have made some interior changes in that plant; they may have changed some machinery or something like that, that
1333 I would not know; I was not a packing house man, I did not inquire into those things.

Q. Just what did you inquire into?

A. I was interested in knowing that the plant was operating, and furnishing a market for live stock, so that these farmers here would have a money crop other than cotton. I busied myself with encouraging production.

Q. Just what did you inquire into with regard to the state of this plant and its physical condition?

A. Well, I went all over this plant; I walked through all of those coolers and killing rooms.

Q. When?

A. Why, many times in 1915, so many times that I don't know how many times I went through it; one of the first things I did when I got here was to go through this packing plant.

Q. You went through all of the rooms in this packing plant at that time?

A. Went through the killing rooms and the coolers and the engine rooms.

Q. How many of these coolers did it have?

A. I don't recall.

Q. How many of these killing rooms did it have.

A. Two; one for hogs and one for cattle.

Mr. Gibson: I call your attention to this: The picture does not purport to be anything except a picture of the exterior of the plant.

1334 Mr. Taylor: The trouble with it is I don't think the witness knows at what stage it was a picture of the exterior of the plant, or at what time it was a picture of the exterior.

Q. Now, you don't know within a year or two when this picture was taken, do you, to get right down to the actual, exact facts?

A. Yes, I do.

Q. What date will you fix?

A. I don't think I ought to be asked to fix a date, because I did not take the picture, but inasmuch as the plant had been completed late in 1914, when I came here in 1915, early in 1915, I found that to be the general appearance of the

plant; I recognize that as being the original plant of the Moultrie Packing Company.

Q. When did you see this picture first?

A. I don't know that I ever saw it before this afternoon; I have never seen it that I know of.

Q. Then the net result of your testimony is that according to the best of your recollection, the plant looked like this picture in 1915, that is about all you can testify to, isn't it?

A. I can testify that that is a picture of that plant when I came here, that is the appearance of the plant when I came here, the plant itself; I won't swear that that pile of lumber was there.

Q. How about the pile of pipes and apparently scrap lumber, how about that?

1335 A. I have no record of that. Made no note of it, then.

Mr. Taylor: I would like to have them marked for identification.

Examiner Sadler: The pictures will be marked B-5 and B-6 for identification.

Mr. Taylor: Mr. Examiner, I suggest that the picture regarding which I have just been questioning the witness be marked B-5 and the other one B-6.

Examiner Sadler: If there is no objection, they will be marked that way.

(The pictures were thereupon marked for identification, Respondent's Exhibit B-5 and B-6 respectively.)

By Mr. Gibson: Q. Since the acquisition of the plant by Swift & Company, Mr. Stratford, what has been its policy in so far as you know, in so far as you have come in contact with it, with that policy, toward the promotion of the live stock industry in this section?

Mr. Taylor: Mr. Examiner, I object to that question, too indefinite and uncertain, fixes no period of time; I further object to it on the ground it calls for a conclusion of the witness; I further object to it on the ground that it is irrelevant and immaterial.

Mr. Gibson: I asked him in so far as he knew, in so far as it came personally in contact with him.

Examiner Sadler: Read the question, please.

1336 (Question read.)

Examiner Sadler: The objection will be sustained.

Mr. Taylor: I will state, Mr. Gibson, for your information, that there is an understanding that either counsel shall

have the benefit of exceptions to any ruling of the examiner, without expressly asking for one; I assume that that stipulation will cover the testimony you are now taking as well as which has been heretofore and will be hereafter introduced by Mr. Horton.

Q. What has been the effect of the acquisition of this plant by Swift & Company upon competition in the purchase of live stock in this section?

Mr. Taylor: Mr. Examiner, that is objected to, as calling for a conclusion, absolutely, of the witness, not calling for any facts, opening the gates for him to wander fancy-free through the realms of speculation.

Mr. Gibson: I think he anticipates and presupposes the answer of the witness; he might state facts, might not wander off into fancy.

Mr. Taylor: I can only object to the questions.

Examiner Sadler: The objection will be noted.

Q. Answer the question.

A. We have more competition now, because we have two live stock yards, one in Georgia and one in Alabama, on which commission firms are buying live stock, offering
1337 a market through Swift & Company here.

Q. Has one of those plants—

Mr. Taylor: Just one moment. Mr. Examiner, I move to strike out the answer of the witness as being all that I anticipated in my objection to the question that it would be, and furthermore, not responsive.

Examiner Sadler: The motion to strike will be noted.

A. I might add one of those yards is at Montgomery and one at Moultrie.

Q. Take up the one at Moultrie—

Mr. Taylor: I wish to extend my motion to strike to the further answer that the witness has made.

Examiner Sadler: All right.

A. The yards at Moultrie have—now afford competition, because we have commission men buying live stock and shipping them into foreign markets, furnishing competition for Swift & Company; Swift & Company aided in the promotion of those yards, gave it their moral support.

Q. How do you know that to be a fact?

A. Mr. McDowell, manager of Swift & Company, asked me in person to do all that I could to help promote the Moultrie Stock Yards.

By Mr. Taylor: Q. How much of the stock of the Moultrie Stock yards is owned by Swift & Company?

A. They don't own any.

1338 Mr. Taylor: I move to strike this answer all out as not responsive at all to the question.

Examiner Sadler: The motion to strike will be noted.

Mr. Gibson: You mean to your question?

Mr. Taylor: No, I mean the answer regarding which I have asked this information.

A. Swift have no stock, in the Moultrie Stock yards company.

By Mr. Gibson: Q. Were you instrumental in the organization of the Moultrie Stock Yards?

A. Yes sir.

Q. Did Swift & Company at Moultrie cooperate with or object to the organization of a stock yards here that would have competitive buying of live stock?

A. They cooperate whole heartedly in organizing the stock yards.

Mr. Taylor: That is objected to.

Examiner Sadler: The objection will be noted.

Q. In your opinion would the establishment of a stock yard here have been practical or not if Swift & Company had not enlarged the plant after having acquired it?

A. No sir.

Mr. Taylor: Oh, Mr. Examiner, I object to this as entirely too speculative.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: I believe the answer was made while I 1339 was objecting; I therefore move to strike it out.

Examiner Sadler: The motion to strike will be sustained.

Mr. Gibson: That would depend upon his opportunity for knowing.

Q. Are you sufficiently familiar with the live stock industry in this section—

A. I am.

Q. To say whether or not—

A. I am familiar with the live stock industry in this section.

Q. A stock yards would be practical here?

A. What was the question?

Q. I say, are you sufficiently familiar with it to be able to say whether a stock yard were practical here, with com-

petitive buying, would have been practical here, at the time it was established, if Swift & Company had not enlarged its plant?

Mr. Taylor: Mr. Examiner, I object to the question as calling for a conclusion of the witness.

Mr. Gibson: I asked a question to be answered yes or no.

Mr. Taylor: I know you did; he answered it yes before you had an opportunity to ask more than half of the question.

A. I misunderstood the question; I thought he asked me if I was familiar with the live stock industry in this section. I am.

Mr. Gibson: What was the ruling on the last question that I asked?

1340 Examiner Sadler: Read the question and the objection.

(Question and objection read.)

Mr. Taylor: Mr. Examiner, I wish to say that if there are any facts in regard to this stock yard which are relevant to the issues of this alleged suppression of competition in this neighborhood, in and about Moultrie, that those facts should be shown in the proper way, not what some one thinks or guesses or comes here prepared to say that he thinks about them, about the situation.

Mr. Gibson: Perhaps he can go into the facts which he knows in this locality, if you will let him answer.

Examiner Sadler: Does your question ask for a no or yes answer?

Mr. Gibson: Yes sir, I asked him if he was sufficiently familiar with it to be able to answer, if he was sufficiently familiar with the live stock industry here.

Examiner Sadler: The objection will be sustained.

Q. Stratford, in establishing a stock yard, what are the essentials?

A. First, the supply of your live stock.

Q. What is a further essential?

A. Competitive buying.

Q. What will produce competive buying?

A. It takes more than one buyer to have competitive buying; we only had Swift & Company here as a market

1341 prior to the organization of the stock yards.

Q. What is the relation between a market and the

supply of hogs, or competitive buying, competitive bidding for hogs?

A. I don't know that I understand your question.

Q. What do men that buy hogs do with them?

A. They slaughter them.

Q. I will ask you what is—

A. Convert them into the finished product.

Q. I will ask you what is the relation between a packing house and the stock yards?

A. The packing house, of course, buys hogs from the stock yards; buys them in the stock yards for slaughter, to convert into the finished product; it is essential to the operation of the packing house that we have hogs here, so that the organization or the stock yards was welcomed as furnishing a competitive market, drawing hogs to Moultrie.

Mr. Taylor: Now, Mr. Examiner, I move to strike out the last part of this answer, the statement that the stock yards was welcomed as furnishing a competitive market, not responsive, furthermore, it is a conclusion of the witness.

Examiner Sadler: The motion to strike will be noted.

A. The fact remains that we have commission men buying hogs on the yards in competition with Swift & Company; that is not speculative.

Q. Mr. Straford, what is the effect of enlarging the
1342 packing house upon the demand for hogs, or upon competitive bidding for hogs?

Mr. Taylor: Now, Mr. Examiner, I object to that question, as not stating all of the elements or all of the conditions which are necessary to enable the witness to formulate an intelligent opinion; I also object to it as calling for an opinion, not for any facts.

Mr. Gibson: I will modify the question.

Q. I will ask you to take into consideration as many of the elements as you know when you answer the question, as many of the elements and conditions as you know.

Mr. Taylor: I still object to it.

Examiner Sadler: The objection will be noted.

A. Repeat the question.

Mr. Gibson: Read the question to him.

(Question read.)

A. The fact is that the increased capacity of the plant here can care for a large number of hogs, making the establishment of yards a sure venture, and making a stable market, because of being able to slaughter those hogs.

Q. Since Swift & Company have acquired—

Mr. Taylor: One minute, I would like, if I may, to ask the witness right at this time if he means to say that a large packing house necessarily means a large slaughter of hogs?

A. They have to get the hogs to slaughter.

1343 Mr. Gibson: I think he meant to say there was capacity for a greater slaughter.

A. They cannot slaughter a large number of hogs without having capacity to do it, that is apparent.

Q. Are you familiar with the capacity of the old Moultrie Packing Company for slaughtering hogs in relation to the number of hogs it received during the fall and winter months?

A. I recall that they were unable to slaughter—

Mr. Taylor: One minute, the answer to that will be yes or no.

A. Repeat the question please?

(Question read.)

A. Yes.

Q. What was that?

Mr. Taylor: I object to that.

A. Hogs accumulated on the yards.

Mr. Taylor: One minute I object to that as hearsay, incompetent and irrelevant.

Mr. Gibson: I don't think it is hearsay, I asked him if he knew, and he said he did.

Mr. Taylor: Yes; I think if you had gone a little further and asked him how he knew he would have said somebody told him about it.

Mr. Gibson: You can bring that out on cross examination if you want to.

1344 Examiner Sadler: The objection will be sustained.

Q. Did you visit at regular or frequent intervals the Moultrie Packing Company during the killing season, that is in the fall and winter months, prior to this acquisition by Swift?

A. No, I was away from here during the heavy killing season in 1915.

Q. Were you there in 1916?

A. No, I was in middle Georgia in 1916.

Q. Were you there in 1917, before the plant was enlarged by Swift?

A. No. I came back here to Moultrie the first of January, 19y9.

Q. I will ask you this, then, did you yourself see any embargo upon the hogs at the plant here?

A. No, I did not see it; I got the facts from the county agent who was located here.

Mr. Taylor: I move to strike out his statement he got the facts and all that followed.

Examiner Sadler: The motion to strike will be sustained.

Q. Do you know of anything that Swift & Comppany has done to lessen competition in buying hogs in this section, or live stock generally?

A. No.

Mr. Taylor: I object to that, Mr. Examiner, as calling for a conclusion of the witness.

Examiner Sadler: The objections will be noted.

1345 Mr. Taylor: I move to strike out the answer as a conclusion, pure and simple, not a statement of any fact at all.

Examiner Sadler: The motion to strike will be noted.

Q. Mr. Stratford, is there any relation between the number of hogs available for slaughter to a packing house and the amount of finished product put upon the market?

Mr. Taylor: I object to that, it is calling for a conclusion, the conclusion of an expert packer, a man who is necessarily possessed of a great deal of knowledge that this witness has not shown to be possessed of.

Mr. Gibson: Well, if he knows he can testify to it, if that comes within his line of study.

Examiner Sadler: The objection will be noted.

A. Well, it is apparent that a packing plant would not put out much of the finished product on the market without having live stock to slaughter.

Mr. Taylor: I think that is a fact that any court will take judicial notice of.

Q. Well, is the amount of finished product available to the packer to offer to consumption in direct proportion to the number of hogs available for slaughter?

A. So, absolutely so, yes.

Mr. Taylor: I object to that, calls for a conclusion of the witness, not comprehending all of the conditions necessary to be taken into consideration in making any intelligent answer.

1346 Q. Mr. Stratford, would the amount of packing house products moved upon the market for sale increase

as the amount of raw material to be manufactured into packing products increased?

A. Yes sir.

Mr. Taylor: That is objected to. Now, Mr. Examiner, the witness is so willing to answer that I am unable to get my objections on the record before he has answered; therefore I am compelled to ask that the last two answers be stricken out.

Mr. Gibson: Well, you may have your objection precede the answers.

Examiner Sadler: The motion to strike will be noted. I will just ask the witness not to answer it until the objection is in.

Q. Now, you can answer.

Examiner Sadler: He has already answered the question.

Q. Now, what is the relation of competition in the sale of packing house products to the amount of packing house products that move into the market for sale?

Mr. Taylor: Now, one minute. Will you please read that question to me?

(Question read.)

Mr. Taylor: I object to that, calls for a conclusion of the witness, and as being incomplete, as presented a problem which is impossible to solve, because of the absence of many conditions which would have a bearing upon the answer, and furthermore, as irrelevant to the questions now before the examiner.

1347 Examiner Sadler: I believe we are getting outside of the scope of the issues here.

Mr. Gibson: I thought the issue was competition, and we was just about the approach of that subject now.

Examiner Sadler: I will call your attention to my instructions, and I will ask you gentlemen to limit yourself accordingly. The objection will be sustained.

Q. Mr. Stratford, the larger the number of hogs slaughtered, the—or the larger the number of hogs raised, either, the larger the number there is available for consumption, isn't that true?

A. Yes.

Q. Now, what is the relation between the number available for consumption and the number thrown upon the market?

Examiner Sadler: Just a second; I have asked you gen-

tlemen to limit your examination in accordance with the telegram there. I believe you are going into all generalities all over the country.

Mr. Gibson: Of course, the scope of that question could be limited to this immediate section.

Mr. Taylor: Mr. Examiner, it seems to me that this is indulging in speculation and generalities and will not get us anywhere. If there are any facts relevant to these issues, it would be my suggestion to take a shortcut and introduce those facts, and then speculate on them later, but at least to put the Commission in the position where they can do the speculating.

1348 Mr. Gibson: We want to show the effect upon competition right here, what effect the increased number of live stock available for packing house purposes, or what enlargement of the raising of live stock would have to do with competition in this locality.

Examiner Sadler: That has nothing to do with the suppression of competition?

Mr. Gibson: In this immediate section and county.

Q. Mr. Stratford, what would you say that the encouraged production of hogs by Swift & Company has had to do with competition here, either in the sale of the live stock or the finished product?

Mr. Taylor: I object to that, Mr. Examiner, as calling for a conclusion of the witness; object to it as calling for conclusions based upon no facts in evidence, no facts shown, and as wholly incompetent and irrelevant.

Examiner Sadler: The objection will be sustained.

Q. Has the acquisition of this plant by Swift & Company tended to encourage the production of live stock or has it lessened competition in live stock here?

Mr. Taylor: I object to that, Mr. Examiner, as an attempt to substitute the witness for the Commission.

Q. I will modify it by this: In so far as your observations are concerned, in so far as your work in the live stock business has come in contact with the fact of that ac-

1349 quisition of this plant by Swift & Company?

Mr. Taylor: I object to that question on the ground that it calls for a conclusion of the witness, based on matters outside of the record, matters upon which we have had no proper—will have no opportunity to cross examine, no opportunity to know what it really is based upon.

Mr. Gibson: I am going to turn him over to you for cross-examination in a minute.

Examiner Sadler: The objections will be noted.

Q. You may answer the question.

Mr. Taylor: Read the question, please.

(Question read.)

A. Swift & Company have stimulated the production of live stock in every way that they could.

Q. State how?

A. Well, they have distributed at great expense literature showing the proper methods of production of hogs and cattle; they gave away thirty white faced bulls, Hereford bulls, to farmers in the territory.

Examiner Sadler: I don't think this has anything to do with the issues of this case, what Swift & Company did.

Mr. Taylor: I move to strike out the answer entirely, as not responsive and entirely outside of the issues.

Mr. Gibson: Our position in the matter would be that to encourage the production of live stock, that the in-
1350 creased production of live stock tends to increase production both of the purchases of live stock as raw material and in the sale of the finished product, and our question is limited to this particular locality. I think that ought to come within the scope of this hearing so far as the intervention of the Chamber of Commerce is concerned, or so far as the facts which they have been permitted under order of the Commission to show, because it has a direct bearing upon competition here.

Examiner Sadler: Well, I will let it go in.

Mr. Taylor: Mr. Examiner, do I understand that my motion to strike out is overruled?

Examiner Sadler: It is noted; I will let it go in for what it is worth at this time.

A. I did not finish answering the question. Swift & Company have given prizes in the form of tankage for hog feed, a pure bred sow to my pig club last year; this year they are offering seven free scholarships to my pig club, sending boys to the short course in agriculture to be held at the College of Agriculture.

Examiner Sadler: Just a second; I dont see what that has got to do with competition.

A. It is to encourage production, though.

Examiner Sadler: We are not getting at the production, we are getting at the competition.

Mr. Gibson: Well, our contention would be that the
1351 effect of an increased production is increased competition.

Q. Has the effect of the interest taken by Swift & Company in the live stock industry as stated by you been to stifle competition or to increase the competition in the live stock business in this county?

Mr. Taylor: I object to that, Mr. Examiner, that is calling for a conclusion of the witness, is calling for a conclusion which may be based on many things not included in the question, many things not shown in evidence, and based very largely on the imagination of the witness.

Q. I will supplement the question by adding, so far as your line of work has brought you in contact with the live stock business and with the effect of these things that you named in this county.

By Examiner Sadler: Q. Just a second. I would like to ask the witness a question. Do you buy and sell pork?

A. No sir.

Q. Hogs?

A. No sir.

Examiner Sadler: The objection will be sustained.

Q. Is it your business to advise the farmers in the raising and marketing of live stock and packing house products?

A. It is in the raising and marketing of live stock.

Q. That is what I should have said. Have you given
1352 any considerable study to that subject?

A. I have.

Q. Have you given your time and attention to it in this county in a practical way?

A. Yes, sir.

Q. From these sources, would you be able to answer the question asked you, from your knowledge obtained in that way?

A. Repeat the question, please sir?

Q. The one that he objected to a minute ago?

(question read)

A. They have increased competition by aiding in establishing the stock yards, competition in buying.

Q. But the thing we were on was the general effect on the live stock business in this county, as you are familiar with it from your work, from working with and cooperating with the people and from study of the conditions in this county?

Mr. Taylor: One minute, will you please read that question?

(Question read)

Q. That is to say, the effect of the interest and activities of Swift & Company which you named a while ago upon the competition in live stock in this county. Mr. Stratford, what is the province of a county agent?

A. The province of a county agent is educational work.

Q. Is it theoretical or practical education?

A. It is practical education; it is carrying to the
1353 farmer those facts which have been proven by experimental stations and gricultural colleges by research and demonstration.

Q. What part of your time do you spend in the county among the farmers in carrying on that work?

A. My entire time is spent among the farmers, what time I am not in the office doing routine work in the office.

Q. What opportunity do you have for observing the live stock industry in the county, among the farmers?

A. I have first hand knowledge of it, being familiar with the operations of the producer, knowing how they conduct their business.

By the Examiner: Q. Do you know how many hogs each farmer sells, how many he buys; how many he raises?

A. No, I dont know, I dont keep a record of the individual farmer's operations.

By Mr. Gibson: Q. When you go into the county calling on the farmers, do you take up with those that you do call upon the relative number of hogs and cattle and other live stock that he is raising from time to time, from year to year?

A. I discuss those matters with him, yes sir.

Mr. Taylor: Mr. Examiner, I would suggest that counsel let the witness state what he really does do.

A. I stated that I was doing educational work, cor-
1354 recting the mistakes in production, advocating improved methods of production so as to increase the products.

Examiner Sadler: Has that got anything to do with competition, with suppression of competition?

Mr. Gibson: If they produce a better grade of live stock—

Examiner Sadler: Oh, we are getting down to a bunch of generalities in this case; we want to get the facts, if you have got any facts, put them in.

Q. I will ask you, Mr. Stratford, if you know whether or

not the available number of hogs was less in 1920 than it had been for three or four years prior thereto, in this county?

A. Yes, it was.

Mr. Taylor: One minute, the answer to that is yes or no, if the answer goes further I move to strike it out; I move to strike out the words, "it was."

Q. I will ask you if you know?

A. Yes.

Q. Well, I will ask you to state, then, if the number was more or less in 1920 than it had been prior thereto?

Mr. Taylor: Now, one minute, before the witness answers that question; I would like to know what knowledge he really has on this subject; I would like to ask first how many hogs there were in this county in 1920?

A. About 45,000.

1355 By Mr. Taylor: Q. How many were there—about—more or less?

A. Well, I dont recall the exact number .

Q. Now, where did this information come from?

A. From the United States census, which the enumerator visits every farm, you see, and takes a record of the number of all kinds of live stock.

Q. You looked in the United States census reports?

A. I have those issued by counties, yes sir, as they come out; the entire report has not been consolidated but I have in my office reports by counties, have them for practically every county in Georgia up to date.

Q. What information you have now is your recollection as to what is shown by the United States census reports, is that correct?

A. Yes, sir.

By Mr. Gibson: Q. Have you that record available, Mr. Stratford, at your office?

A. It is in my office, yes sir.

Mr. Gibson: We will get that and introduce it.

Mr. Taylor: Now, I object to the witness answering the question here, it is secondary evidence; the best evidence is available.

A. That is actual count.

Examiner Sadler: The objection will be sustained.

A. The census report is actual count.

1356 Q. I will ask you this question, Mr. Stratford, which you can answer yes or no. From your observation and travel through the county, would you be in position to give an

opinion as to the relative numbers through those years, that is, as to whether they would be more or less?

A. Well, in 1920—

Mr. Taylor: One minute.

Examiner Sadler: Just yes or no.

Q. I just want to know if you are prepared to answer from your observation?

A. Yes, I am, but I wanted to qualify that, rather, I wanted to explain about how I understood your question.

Q. You can do that without going into the number or the answer to the other question.

Mr. Taylor: I object to the explanation.

Q. He wants to give—

Examiner Sadler: Let the witness proceed.

Mr. Gibson: He can do that, and then the court can say whether it would be proper for him to answer from that opinion.

A. Yes, it is possible for me to answer from my observations.

Mr. Taylor: Mr. Examiner, the witness is asked here for an opinion of the relative number of hogs raised; he has the census reports; let them put them in the record, and then let the Commission draw its own conclusions from the actual facts?

A. That is the only obtainable source of information.

1357 Q. Are there any census reports, though, for the other years that I named?

A. No sir, the census report only comes out every ten years.

Mr. Gibson: We submit, Mr. Examiner, that that would be the only way to show it. There is no census taken except once every ten years.

Mr. Taylor: I also submit that somebody's opinion from riding through the country is wholly valueless as to the number of hogs that there may be roaming about the fields and roads and woods.

Mr. Gibson: That would depend upon his opportunity for observation and his connection with the type of work.

Mr. Taylor: Did he ever count them during any one of those years?

A. I cannot count them all, but here is the point. If I visit a dozen farmers and find that these dozen farmers are producing more hogs or less hogs than previously, it is an

index to what the other farmers are doing, when I inquire from them as to what the other farmers are doing.

By Mr. Taylor: Q. Did you make any record of what the farmers told you at that time, these various numerous times that you visited them during these several years that you have been asked about?

A. I dont keep a compilation of the information that I get from the farmers.

1358 Mr. Taylor: I submit, Mr. Examiner, that this sort of testimony is wholly valueless.

Examiner Sadler: The objection will be sustained.

Q. Now, Mr. Stratford, I will ask you to give the facts so far as they come within your knowledge, so far as you know yourself, as to the relative number of hogs in the years named?

A. There was less hogs in 1920 than there was—

Mr. Taylor: Mr. Examiner, I move to strike out this answer, it is not going into facts; it is generalities, totally devoid of any fundamental facts.

Mr. Gibson: So far as he knows, so far as he has come in contact with it, we submit it would be competent.

Examiner Sadler: The witness says he has not gone—has not kept any records of the amount of hogs, so I dont think he can given an intelligent answer; it would be only opinion evidence.

Mr. Gibson: A man can make observations, I submit, without having to take notes of what he sees all the time.

Examiner Sadler: Well, the Commission has not got any facts before it. We will just get a whole lot of opinion evidence; we want the facts; the motion will be sustained.

Mr. Gibson: In order to get in the record the testimony spoken of here, we should like to reserve the right to state into the record the facts that this witness will testify to, in answer to the questions to which objections have been sustained.

1359 Examiner Sadler: All right. That is, a short concise statement?

Mr. Gibson: Yes sir. We will give that to him some time when we have not other witnesses to be examined.

Mr. Taylor: No objection.

Mr. Gibson: You may take him.

Cross-Examination by Mr. Taylor.

Q. Mr. Stratford, when were the Moultrie stock yards organized?

A. Last summer, summer of 1920.

Q. Now, just what do you mean by organized in the summer of 1920?

A. I mean that the promotion campaign was conducted and the stock sold; that had to be done before the yards were built.

Q. When was that started, along in July, June, August or when?

A. I did not keep a record of when that was started, though I took part in it.

Q. Well, dont you know when it was?

A. Well, all I could do is to say I think it was about along in July, I think it was about July when it was started, but I dont recall the exact date.

Q. Now, when did they actually commence operations?

A. They commenced operations along in the fall months, along about September or October.

Q. Of 1920?

A. 1920. No hogs came in until about then, in any volume.

1360 Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused)

W. H. BARBER was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Gibson.

Q. Your name is W. H. Barber?

A. Yes, sir.

Q. Where do you live?

A. Live in Colquitt County.

Q. How long have you lived here?

A. I have lived in this county since '96.

Q. What is your present occupation?

A. Farming and banking.

Q. Did you have any connection with the Moultrie Packing Company when it was in operation?

A. I was a stockholder, yes sir.

Q. Did you hold any position or office with the company?

A. Vice-president.

Q. Under what auspices or whose influence was the Moultrie Packing Company promoted and organized?

Mr. Taylor: Mr. Examiner, I object to that as having already been gone into in this case several times; it is entirely cumulative.

1361 Examiner Sadler: I think it shows clearly on the record who promoted this, by Mr. Brooks' testimony yesterday, besides Mr. Vereen's testimony in Atlanta, I think that point is well covered.

Mr. Gibson: You remember Mr. Brooks was in Minnesota at the time it began and he was brought down here by representatives of the Chamber of Commerce, who went after him.

Mr. Taylor: Mr. Brooks, I think, testified to all of that yesterday, when you were not here.

Examiner Sadler: Also covered by Mr. Vereen in Atlanta; it has all been covered; it is in the record; it would just be cumulative evidence, testimony.

Mr. Gibson: Is there any limitation on the number we can call to a point?

Examiner Sadler: Oh, no.

Mr. Gibson: Just asking him this in passing, so as to acquaint the Commission with his knowledge of it.

Examiner Sadler: All right.

Q. Who were the stockholders in that company, Mr. Barber, by whom was it organized?

A. I dont know as I could say just now who they all were, because there was quite a number; they were citizens, though, of this community, and around about through the county.

Mr. Taylor: I think we have an exhibit here showing the stockholders in detail.

Q. I dont care for their names; I wanted to know
1362 what class of people they were, whether they were farmers and business men of this county?

A. They were.

Q. What motive inspired the organization of the Moultrie Packing Company?

Mr. Taylor: That is objected to.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Immaterial, also as cumulative, having been completely covered by the testimony of both Mr. Vereen and Mr. Brooks.

Q. You may answer.

A. Ask the question again.

(Question read)

A. To create a market for live stock and promote live stock production in this community.

Q. Had there been a market here prior to that time?

A. There had been nothing except little local markets, did not amount to anything; no commercial market.

Q. Did any condition exist in the agricultural situation of this county at that time which rendered it desirable to have a market for live stock?

Mr. Taylor: That is objected to, Mr. Examiner, as immaterial to the issues and outside of the scope of this examination; also as cumulative, having been all gone into by both Mr. Brooks and Mr. Vereen.

1363 Examiner Sadler: The objection will be noted.

Q. You can answer, Mr. Barber.

A. The boll weevils were coming into our section, and we thought it necessary, in order to keep up our standard of prosperity, to resort to the production of something else other than cotton, which had been our chief money crop.

Q. Did the stockholders of that company organize it with the intention of permanently engaging in the packing industry?

Mr. Taylor: Mr. Examiner, I object to that, incompetent, immaterial and irrelevant, calling upon this witness to state the state of mind of a great many other people; and furthermore, it is wholly irrelevant and immaterial to the issues now before this body.

Examiner Sadler: The objection will be sustained.

Q. You say you were one of the stockholders of the company?

A. I was, yes sir.

Q. Did you attend its meetings, meetings of the stockholders?

A. Fairly regularly, yes.

Q. Was the question of the sale of this plant to Swift & Company discussed by the stockholders?

A. Yes.

Q. Can you state the idea and purpose of the stockholders in selling it to Swift?

Mr. Taylor: I object to that, Mr. Examiner, as wholly irrelevant and immaterial to the issues here; makes no
1364 difference whatever what the intention of the stockholders were in selling.

Examiner Sadler: The objection will be sustained.

Q. I will ask you why was it desirable to or necessary to sell the Moultrie Packing Company?

Mr. Taylor: I object to that, Mr. Examiner, no foundation laid for the question, assuming facts not shown, furthermore, irrelevant and immaterial.

Examiner Sadler: The objection will be noted.

Q. You can answer that question, Mr. Bargor?

A. Ask the question again, please?

(Question read)

Mr. Taylor: Now, Mr. Examiner, I will ask you to note more carefully—to note carefully the question, and what it calls for, and the objection.

A. Our reason? First, I would say my personal reason—we all agreed, of course—was it was a new venture with us. It took a good deal of money to finance it; those of us that had the most money in it had as much business as we could look after outside of that, and there was no man among us that was looking for more business. Having promoted the enterprise to create a market for stock, we really felt that it would be carried further, our purpose and intention, if we could sell the plant to some regular packing company, who would be prepared to carry it further than we could. Therefore we considered it having accomplished our purpose
1365 and done more than we could have done in making this trade; we were very much pleased to sell it; it unloaded a burden; I had signed notes, a good many large notes, larger than I wanted to myself; I was glad to get clear of it.

Q. You say you had endorsed notes—

A. To finance it.

Q. You mean the directors, individual stockholders?

Q. Directors.

Mr. Taylor: Mr. Examiner, I move to strike out the answers to the last two questions as having nothing whatever to do with the question of suppression of competition.

Examiner Sadler: Motion to strike will be sustained.

Q. What was the situation of the directors or stockholders of the Moultrie Packing Company with reference to financing the operation of that company?

Mr. Taylor: I object to that on the same grounds that I moved to strike out the answer to the preceding questions: nothing whatever to do with the question of suppression of competition.

Mr. Gibson: If they were not able to operate, I call your attention to the fact that there might have soon been no competition to suppress.

Examiner Sadler: The objection will be sustained.

Q. In the acquisition of this plant by Swift & Company, was it the first company to approach the Moultrie Packing Company with reference to the purchase of this plant?

1366 Mr. Taylor: I object to that, Mr. Examiner, as wholly irrelevant and immaterial, makes no difference whatever which company or what company approached the stockholders first, whether any other company did or did not approach the stockholders.

Examiner Sadler: The objection will be sustained.

Q. Were the stockholders of the Moultrie Packing Company as willing to sell it to Swift as Swift was to purchase the same?

Mr. Taylor: Object to that, Mr. Examiner, as wholly immaterial to the issues here; furthermore, as calling for a conclusion of the witness, not only as to the state of mind of the stockholders, but to the state of mind of the officers of Swift & Company.

A. I could not answer that anyway.

Examiner Sadler: The objection will be sustained.

Mr. Gibson: He is familiar with the state of mind of the stockholders here.

Q. Did Swift & Company use any unfair means or any device to induce the stockholders of this plant to sell?

Mr. Taylor: Mr. Examiner, I object to that question as wholly immaterial to the issues in this case, calling upon the witness for a conclusion.

Examiner Sadler: The objection will be sustained.

Mr. Gibson: As I understood, it was charged by Section 5 of the Commerce Act; it might be relevant under that; Federal Trade Commission Act.

1367 Mr. Taylor: Even conceding that for the purpose of argument, it is calling for a pure conclusion of the witness, not based upon any facts whatever.

Mr. Gibson: Under the charge under that section, it might be relevant to show the circumstances of the sale of the plant to Swift.

Examiner Sadler: Sow the facts, that is what we want to get into the record; this is all opinion evidence.

Q. Have you any knowledge of the circumstances or the

reason or the occasion of the sale of the Moultrie Packing Company to Swift & Company?

A. I stated them before, Mr. Gibson, I think, just about what covers your question.

Mr. Gibson: Well, now, that was ruled out. I will ask you this then:

Q. Was that answer based upon your own information and knowledge?

A. Ask the question again.

Q. I mean your answer?

A. I am not sure just what was ruled out, I know there was a portion of the answer ruled out. What is your question now?

(Question read)

Mr. Taylor: Let's be sure that Mr. Barber has the right answer in his mind before the attempts to answer it.

Mr. Gibson: Read the answer that was ruled out.

1368 (Answer read)

Q. That answer was based upon your knowledge?

A. Yes.

Examiner Sadler: I am guided by the instructions I received, this morning, I will sustain the objection.

Mr. Horton: Are you referring now to the secret instructions?

Examiner Sadler: I am referring to the instructions I read into the record at the request of both counsel.

Q. Do you know whether or not before the operation of the Moultrie Packing Company, and during the time that it was operated as such; there was any competition in this county between Swift & Company and the Moultrie Packing Company in the purchase of live stock?

Mr. Taylor: Mr. Examiner, I also object to this question as calling for a conclusion of the witness; I object at this time because the answers to these questions which are properly answered by yes or no are very frequently followed by answers which the question do not really call for.

Mr. Gibson: I asked him if he knew one way or the other, was the question I asked.

Examiner Sadler: The objection will be noted.

A. Whether there was competition between Swift & Company and anyone else in this territory in the purchase of live stock?

Q. Yes sir, including the Moultrie Packing Company?

A. Yes sir, I know about that.

1369 Q. Was there any competition?

A. There was not.

Mr. Taylor: Now, one minute. Mr. Examiner, the answer was made before I had opportunity to object.

Mr. Gibson: Well, you may consider your objection before.

Mr. Taylor: I would like to cross examine the witness for a few minutes preparatory to making a motion to strike out the answer that is called for, if it may seem appropriate to do so.

Examiner Sadler: Any objections?

Mr. Gibson: No objections.

By Mr. Taylor: Q. Mr. Barber will you please state exactly what you mean by competition?

A. What—the way I understood his question—did you want me to state how I understood his question?

Q. No, I would like you to state exactly what you mean by competition?

A. Well, what I mean by competition was the matter of whether Swift & Company was purchasing live stock in this territory prior to the establishment of the Moultrie Packing Company, or up to the time that they purchased it, if you want to go that far.

Q. What do you mean by this territory?

A. I mean Colquitt County, several counties, you might say these southwest counties to the Florida line, I mean

1370 southwest Georgia counties, taking to the Florida line.

Q. How large and area do you have in mind?

A. Well, I would say to at least a county or two above here, then there is one tier of counties between here and the Florida line; I think I am familiar enough with those.

Q. Going clear to the Florida line?

A. Yes sir.

Q. Do you wish to be understood as testifying positively there that down to June, 1917, Swift & Company did not buy any hogs in that territory?

A. I have no knowledge of it; I was very much interested in the promotion of the live stock industry, it seems to me that I would have known; I have no knowledge of their purchasing any live stock in around about here, in any of the adjoining counties.

Q. But you dont wish to be understood on the record, I

assume, then, as testifying positively that Swift & Company did not buy any hogs in that territory?

A. Well, of course, something might happen and I not know of it, it could have been possible, but not probable.

By Mr. Gibson: Q. I will ask you this, before you engaged in the packing busines were you a farmer?

A. Yes, sir, a farmer.

Q. Did you raise live stock?

1371 A. Yes sir.

Q. On your farm?

A. Yes sir.

Q. Did you offer that for sale on the market?

A. Yes sir.

Q. Whenever you could find a market?

A. Yes.

Q. Did you ever know of a market offered by Swift & Company in the section referred to for live stock?

A. I did not.

By Mr. Taylor: Q. Well, where is your farm located?

A. Sir?

Q. Where is your farm located?

A. Well, all of my farming interests is carried on in this county, I have some north of here and some out northeast of here.

Q. How far away from Moultrie?

A. Five miles; of course, I had other Colquitt county land, like some that we had a little further west and northwest of here, at that time.

Q. Now, do you get down through those southern counties contiguous to the state of Florida very frequently?

A. Well, no, I dont go over there so very much, I have been interested in land, timber land.

1372 Q. It is quite possible that Swift & Company might have bought a good many hogs through there without your knowing it, isnt it?

A. Not probably, not probable at all, sir.

Q. I say, it is quite possible?

A. Well, I hardly see—I should say not.

Q. How frequently do you go through there?

A. I dont go through all of it maybe at all, but we have some knowledge of things like that, when you are interested, like we were, you know, in the stock business; it was making us take notice, and be on the look out for anything of that sort, because—

Q. Well, you mean that you talked with people that you might see on the streets, farmers, when they come in town, is that the way you got your knowledge?

A. Well, I got my knowledge in various ways, about like most of people get it; I have to get some knowledge, you know, to stay in business, or I would not have had any.

Q. Do you see all the farmers in the southern row of counties?

A. No sir, no sir, no sir, dont do that, you know people aint going to do that.

Q. No, I mean, do you see them, talk to them, the farmers there through that southern row of counties?

A. Well, I would not like to have you to be sarcastic at all, addressing me; I am a respectable citizen and a gentle-
1373 man, used to being treated as such.

Q. It is the furthest from my intention to be sarcastic; I am simply getting at the facts.

A. I would like for you to act with me that way, like you respect me; I want to be pleasant about it.

Q. Oh, I am sure you misunderstand me, Mr. Barber, I had no intention of being otherwise.

Examiner Sadler: Let's not have any more of this. Dont put any more of this on the record.

Mr. Horton: I insist on it going on the record; I think it should be on.

Examiner Sadler: Dont put any more of it on.

Mr. Taylor: What is the state of the record?

(Question read)

A. Well, I dont want to be unpleasant at all, I want to be understood on that, but I dont see how you could contemplate at all that anybody could see all the farmers, if that is what you mean, and talk with them; because it is a physical impossibility. We have no way of doing that; don't claim to do that; of course we see a great many of them in the immediate section there, all of them in the county, and some of them in the adjoining counties; see a good many in the territory that we are most interested in.

Mr. Taylor: Now, Mr. Examiner, I move to strike out the testimony of the witness to the effetct that Swift & Com-
1374 pany was not in competition with the Moultrie Packing Company in purchasing hogs prior to the acquisition of the stock.

Examiner Sadler: The motion to strike will be noted.

By Mr. Gibson: Q. Mr. Barber, I will ask you this, in

that connection, have you ever been engaged in the turpentine business, the business of distilling and selling turpentine and resin?

A. Was I ever engaged in it?

Q. Yes?

A. Yes sir.

Q. In selling that product, Mr. Barber, or any other products that is offered for sale, is it necessary for you to see every other man in this section engaged in the same business to know where there is a market for that product?

A. There is not.

Q. Who buys in this section?

A. No, it is not.

Q. What would you say about the competition in this county, and section, in the live stock business before and after the acquisition of the Moultrie Packing plant by Swift & Company?

Mr. Taylor: Now, Mr. Examiner, I object to this as calling for conclusions.

Q. I will ask you another question to qualify you before you rule on that. Have you any connection with the Moultrie Stock yards?

1375 A. Yes sir.

Q. What is that?

A. I am president of it.

Q. Have you from that connection, as well as your previous connection with the packing house and your business as a farmer an opportunity for judging the live stock business in this county and section, especially in so far as competition in the purchase of live stock is concerned?

A. Yes.

Mr. Gibson: Now, you can rule on the objection.

Examiner Sadler: The objection will be noted.

Mr. Taylor: Mr. Examiner, it seems to me that before the witness was permitted to give opinions, they at least ought to show on this record on what the opinions that they propose to give are based, so that the Commission can form its own opinion, based upon the facts, and not be compelled to accept the opinion of the witness without knowing on what he bases his opinion.

Mr. Gibson: We submit it would be difficult to qualify a man better to testify on a question of competition and live stock markets in this section than this witness is qualified.

Mr. Taylor: I know, but we have no facts on the record

here; you are asking the witness' opinion, without showing any facts upon which that opinion is based; it may be true that Mr. Barber is an important factor in the stock
1376 yards; it may be true that he has had very extensive knowledge and has very extensive knowledge, yet it is unfair to the Commission to have him come here and make a bald statement of his opinion; he should state what the facts are, what facts his opinions are based upon, so that the Commission will have an opportunity to either concur with him or otherwise; a mere opinion, they are unable to get any idea about it at all; they dont know what Mr. Barber had in his mind which caused him to form that opinion.

A. I would say that I had the facts; I think I could satisfy you of some facts about competition in buying.

Q. You propose to testify from your knowledge about this situation?

A. Yes sir, yes.

Q. I believe the objection was noted, wasn't it? You may go ahead and answer the question, now, Mr. Barber?

A. The question is already answered as far as you asked, isnt that true?

Q. No, there is a question before that that was not answered.

A. What was it?

Mr. Gibson: Read that.

Examiner Sadler: I understand that you are going to testify from facts then?

A. Yes sir.

Mr. Taylor: Testify from facts, or testify to facts?

Mr. Gibson: Both.

1377 (Question read)

Q. In other words, has the effect of the acquisition been to encourage competition or to diminish it, increase it or destroy it?

Mr. Taylor: I object to that, Mr. Examiner, absolutely; it is wholly incompetent to say what the effect was; we have not got on the record what the facts are.

Q. Well, give the facts then, Mr. Barber, as far as you know, illustrating that fact.

Mr. Taylor: The record shows that I have an objection to that

Examiner Sadler: He is testifying to facts?

Mr. Taylor: We have no facts before us from which he can testify, excepting he is president of the stock yards.

Examiner Sadler: The witness stated he is going to give the facts; he can do that.

Mr. Taylor: The question does not call for the facts; it calls for a conclusion.

Mr. Gibson: You can answer the question, Mr. Barber.

A. I dont think you have got the question prepared so that I can answer it intelligently, that I understood, the last; I should like to look over some of it again there; I want to answer intelligently; I want to answer in a way that it would be fact, not mere volume building, if I can.

Q. Well, we will ask you then, to state the facts as
1378 they come within your knowledge, to illustrate the effect which the acquisition of the Moultrie Packing Company by Swift & Company has had upon competition in the buying and selling of live stock in this county and section.

Mr. Taylor: Now, Mr. Examiner, I object to that question; if it is a question only as to facts that exist, or perhaps some of the facts which exist, that calls upon the witness to form a conclusion and state what—which of those facts support some conclusion that he may form which is not already expressed. I object to the form of the question and the answer that it necessarily calls for; if the witness is prepared to state what the facts were before the acquisition, and what the facts were after the acquisition, what the exact conditions were, that would be—

Mr. Gibson: That is exactly what we are asking him to do.

Mr. Taylor: It is a very peculiar way of expressing it.

A. I can state there what I think are the facts, and then if you don't want it you can rule it out.

Mr. Taylor: The question is, Mr. Barber, you have not been asked for that.

Mr. Gibson: I understand he has.

A. Then if it is something that ought to be ruled out, rule it out.

Examiner Sadler: Go ahead and state the facts.

A. Well, the facts are that the purchase of the plant by Swift & Company carried—they enlarged the plant,
1379 they made it about three times as large as it was; agreed to do it, and did do it, that was part of the consideration of the purchase to do that.

By Mr. Taylor: Q. One minute, Mr. Barber, was that—was there a written agreement upon that matter, or contract as to what Swift & Company would do along that line?

A. I could not say of my own knowledge whether that went into writing or not, because I did not handle the papers.

Q. Weren't you a party to the negotiations?

A. No sir; I was not there when—it was closed up, I believe, at Jacksonville, maybe.

Q. I am of the impression that there was a written agreement as to whatever was to have been done by Swift & Company.

Mr. Gibson: Well, until it appears that it was in writing, it would be proper for the testimony to remain in the record. As a matter of fact, it was not in writing.

By Mr. Gibson: Q. Continue your answer, Mr. Barber?

A. It has got more capacity for handling stock, naturally, it qualified them to use more stock, and put them in position to get more and give us a greater market for stock than we had before.

Mr. Taylor: Now, Mr. Examiner, I move to strike out the last words, "give us a greater market for stock than we
1380 had before," as a conclusion.

Examiner Sadler: The motion to strike will be sustained.

Q. What do you mean by a greater market, Mr. Barber?

A. I mean it prepared them to use more stock, and they naturally could handle—give them a greater capacity for handling stock than we had.

Q. What was the situation of the plant prior to its acquisition by Swift & Company with respect to its capacity to handle hogs there today during the killing season?

A. It was insufficient to handle after the first year of operation, through the fall and winter; of course, people were not educated to producing hogs to offer along in the year then, follow along in the dull season; of course, if we had had them distributed along during the year we could have handled them all very well.

Q. Was it necessary to place an embargo on the shipment of hogs to the Moultrie Packing Company?

A. We had to refuse to take them through December and January, during those months.

Q. Would you say that the effect of enlargement of the plant by Swift was to obviate the necessity for placing an embargo upon hogs, which the old plant had made?

Mr. Taylor: That is objected to, Mr. Examiner.

A. Swift & Company—

Examiner Sadler: Just a second.

1381 Mr. Taylor: That is objected to as having been answered, in the first place; he said it gave them a larger capacity and that answered the question as fully as any answer that he could make to the present question.

Examiner Sadler: The objection will be sustained.

Mr. Gibson: All we expect the witness to testify to is what he stated in the record, so we will let it go at that and get the benefit of it.

Q. What would you say about the number of buyers in this county before and after the acquisition of the plant by Swift & Company?

A. I don't know the exact number, but they put men out, traveled men over this portion of Georgia, and through a large portion of Florida; I really don't know how many men. We had practically no effort along that line.

Q. When you say "we" you mean the Moultrie Packing Company?

A. The Moultrie Packing Company.

Q. You did not travel men extensively for the purpose of buying live stock for the Moultrie Packing Company?

A. No.

By Mr. Taylor: Q. Did you need to?

A. We did not through November, December and January; afterwards we might have traveled a good many and not have gotten near as many as we could have used, because they were not producing them at that time, during those months, you know, for slaughter.

1382 By Mr. Gibson: Q. What was the connection, if any, between the enlargement of the Moultrie plant by Swift & Company and the establishment of the Moultrie Stock Yards, of which you were president?

Mr. Taylor: Well, now, I object to that, for the same reasons, calling for a conclusion.

Q. What is the Moultrie Stock yards?

A. What is it?

Q. Yes sir.

A. It is a place where commission men, men who deal in live stock, gather and bid on stock that is brought there and offered to them, in any way.

Q. When was the Moultrie Stock yards established?

A. Established last summer.

Q. From your knowledge of live stock in this county and section before and after the acquisition of the Moultrie plant

by Swift & Company, would you say that the establishment of the Moultrie Stock yard had tended to increase competition in the buying and selling of live stock?

A. I would say it has.

Q. Was there a competitive live stock yard here in Moultrie prior to the acquisition of the plant by Swift?

A. There was not.

Q. Do you know of any instance or way in which Swift & Company has attempted to lessen or destroy competi-
1383 tion in buying and selling of live stock in this county or section?

Mr. Taylor: I object to that, Mr. Examiner, as calling for a conclusion of the witness.

Mr. Gibson: I asked him if he knew of any instance.

Examiner Sadler: The objection will be noted.

Mr. Gibson: You can answer.

A. If I knew—read the question.

Mr. Gibson: You may read him the question.

(Question read.)

A. I do not, no sir.

Mr. Taylor: Now, I move to strike out the answer as being a conclusion of the witness, not attempted to be a statement of fact.

Examiner Sadler: The motion to strike will be noted.

Q. From your connection with the Moultrie Packing Company, from your general knowledge as a farmer, and seller of live stock in this county, would you say that Swift & Company had made any effort to lessen or destroy competition in the buying or selling of live stock that you know of?

Mr. Taylor: Just a minute, read me that question.

(Questioned read.)

Q. Would you know it?

A. I don't think—I would think I would have known it.

Mr. Taylor: Just one minute. I object to that question as calling upon the witness to exercise his powers of conclu-
sion before deciding whether or not in fact he may
1384 know of any way of lessening competition.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: I move to strike out the answer, Mr. Examiner.

Examiner Sadler: The motion to strike will be sustained.

Q. Suppose, Mr. Barber, that they had made any general effort to lessen or destroy competition in this county in the purchase or sale of live stock, would you know that?

Mr. Taylor: I object to that for the same reason enumerated.

Mr. Gibson: I submit that a general effort would come within the knowledge of anybody in that business.

Examiner Sadler: The objection will be sustained.

Q. Mr. Barber, from your personal knowledge and from your observation in the county and section in which you have been, would you say that there were more hogs or less hogs in 1917,—I mean more or less hogs in 1920 than there had been in 1917, 1918, and 1919?

A. I could not answer that.

Q. Are you familiar, Mr. Barber, with the policy pursued by Swift & Company, or rather by its representatives in this county, towards the encouragement of the production of live stock?

A. I think so, I would say I am.

Q. Will you state what that is?

A. Yes.

Mr. Taylor: Mr. Examiner, that is quite outside of the scope of our present examination. I therefore object
1385 to it as immaterial and irrelevant.

Mr. Gibson: We think that would relate directly to competition in this county, if we can show that they have pursued a policy of encouraging the production of live stock, that would necessarily mean a large number of live stock that would have logically and naturally resulted from it; that would tend to increase competition here.

Mr. Taylor: Wouldn't it tend to do the reverse?

Mr. Gibson: I think not.

Examiner Sadler: The objection will be sustained.

Mr. Gibson: I believe I will turn the witness over to you for cross examination.

Mr. Taylor: I don't believe that I have a single question that I want to ask Mr. Barber. Just a minute—no, no cross examination.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Examiner Sadler: You have no more witnesses here to put on tonight, have you?

Mr. Gibson: No, not this evening.

Examiner Sadler: Very well, then, we will take a recess until ten o'clock tomorrow morning.

(Whereupon, at 5:30 o'clock P. M., July 13, 1921, a recess was taken until 10:00 o'clock A. M. of the following day.)

1386 Docket 453.

Moultrie, Georgia, July 14, 1921.

Met pursuant to adjournment, 10:00 o'clock A. M.

Before:

Clarence T. Sadler, Examiner.

Present:

Parties as before.

C. W. PIDCOCK was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Mr. Pidcock, do you live in Moultrie?
A. I do.
Q. How long have you lived in Moultrie?
A. About twenty-five years.
Q. What is your business here?
A. I am in the railroad business.
Q. You are in the railroad business; how long have you been a railroad man?
A. All my life, thirty-five years.
Q. What railroad are you president of, if any?
A. Georgia Northern.
Q. How long have you—I believe you state you have lived in this community for twenty-five years?
A. Yes, sir.
Q. Have you for the last ten years been familiar with the competitive conditions here with referenc to buy-
1387 ing and selling of live stock?
A. Yes sir.
Q. I will get you to state whether or not there was prior to the time Swift bought out the old Moultrie Packing Company, whether there was any competition here then in the buying of live stock?
Mr. Taylor: Mr. Examiner—
A. Absolutely none.
Q. Absolutely none?
Mr. Taylor: Just a minute, that is objected to as calling for a conclusion of the witness, also as immaterial to all the issues of this case. I move to strike out the answer, as it

was made before I had been allowed to complete my objection.

Q. Mr. Pidcock, do you know the conditions?

Examiner Sadler: Just as second.

Q. Personally?

A. I do.

Q. Do you know of your own personal knowledge the conditions that existed so far as competition is concerned?

A. I do.

Q. What you say is not based upon hearsay?

A. No.

Q. Nor the opinion of others?

A. No, it is my own opinion.

Q. Based upon your own personal knowledge?

1388 A. Absolutely.

Q. All right. Now, I believe you said that of your own personal knowledge there was no competition here in the buying of live stock?

Mr. Taylor: One minute, I move to strike out this answer —I understand there has been no ruling yet—that there was no competition, and I object to it on the further ground that it was not responsive to the question.

Examiner Sadler: Read the question and answer?

(Question and answer read.)

Mr. Hill: Read on.

Mr. Taylor: The witness said of his own opinion on that.

Mr. Hill: No, he said of his own knowledge.

A. Of my own knowledge.

By Mr. Taylor: Q. Mr. Pidcock, what is competition, what do you mean by competition?

Mr. Hill: Let me get through with him before making your cross examination.

Mr. Taylor: I will ask the examiner for leave to cross examine at this time.

Mr. Hill: I submit that by every rule of law, every rule of ethics, he has no right to take this witness away from me at this time for cross examination, before I finish my direct examination.

1389 Examiner Sadler: Do you want to base your objection on your cross examination?

Mr. Taylor: Certainly.

Examiner Sadler: The permission will be allowed.

Mr. Hill: Well, if your Honor please, you can do that on cross examination, at the proper time, then if it develops

that his testimony is irrelevant, then he can make a motion to rule it out, but let me finish with my witness and then turn him over to him for cross examination, to cross examine as much as he pleases, that is orderly; that is the rule, that is right.

Mr. Taylor: Mr. Examiner, possibly I am laboring under a misapprehension, but I am of the impression that this hearing is in charge of the examiner, and not the associate counsel for Swift & Company. I understand there has been a ruling here by the examiner; I would like to proceed in accordance with that ruling, if I am permitted.

Mr. Hill: If your Honor please, I recognize the fact that you are in full control of this thing, but I also recognize the fact that any lawyer who is permitted by the Commission to come here and examine witnesses has some rights, that is, the right of being treated decently and legally, and I insist upon it.

Examiner Sadler: We won't have any more argument on it upon the record. Do you want to base your objection on the cross examination?

Mr. Taylor: Yes.

1390 Mr. Gibson: Mr. Pidcock—

Examiner Sadler: Just a second; I want to rule on this. I will allow Mr. Taylor to cross examine to base his objections on.

By Mr. Taylor: Q. Now, Mr. Pidcock, what do you mean by competition?

A. Competition is where there is more than one buyer; takes more than one buyer to create competition, as I understand competition.

Q. Do you wish your answer to stand as being that there was no buyers of hogs or live stock in the vicinity of Moultrie before Swift & Company purchased the stock of the Moultrie Packing Company?

A. Yes sir. There was none.

Q. Do you know that positively, of your own knowledge?

A. I do.

Q. Do you know what territory the Moultrie Packing Company bought this live stock in?

A. Yes sir.

Q. Where was it?

A. They bought live stock as far west as Alabama, around Dothan; pretty near to Montgomery; they bought in north and south Florida. They bought stock as high up as Macon,

over to Columbus, all this territory I have given you, the radius in which they purchased.

1391 Q. Through all of the intervening territory here, to the limits you have described?

A. Yes sir.

Q. How frequently do you visit that territory?

A. I don't have to visit it; I am a railroad man, I can tell by the billing where this stock comes from, where they originate; I don't have to visit this territory.

My Mr. Hill: Q. Were you also a stockholder?

A. I was a big one, and an endorser of the old Moultrie Packing Company paper.

By Mr. Taylor: Q. You say you did not visit these various towns?

A. I visit them from time to time, just like you would if you lived here.

Q. Well, those visits that you make enable you to know what stock is shipped out of those towns to the west or the south or the east or the north, away from Moultrie?

A. They were not shipping any, at least that I know of. Of course, I was not there every day, in any town, to know whether they shipped to other towns or not, but there was no other market except to come here.

Q. You mean in this immediate vicinity?

A. In this immediate vicinity.

Mr. Taylor: Now, Mr. Examiner, I renew my motion

1392 to strike out the answer as being based on hearsay.

Examiner Sadler: The motion to strike will be noted.

By Mr. Hill: Q. Mr. Pidcock, by reason of your being a stockholder in the old Moultrie Packing Company, do you know, from your connection with that plant, and from seeing and knowing about live stock conditions here, that there was no competition?

A. Yes sir.

Q. Now, do you know that because of your personal and intimate connection with the business?

A. I do.

Mr. Taylor: Mr. Examiner, I object to these questions as grossly leading.

Mr. Hill: I submit that they are, but if he wants to be that technical, I will put it another way then.

Mr. Taylor: That is all right; the witness is perfectly capable of testifying.

Mr. Hill: We don't want to be technical with our friend over there, your Honor.

Examiner Sadler: We won't have any argument on the record about that.

Mr. Hill: We don't desire to be technical in this hearing; our purpose is to come here in good faith to develop the facts, the truth of the situation is so far as this locality is concerned, in conformity with the telegram.

1393 Mr. Taylor: There will be no objection.

The Witness: Mr. Examiner, will you permit me to make a little statement on that thing, on the live stock business?

Mr. Hill: If it is relevant state it.

Examiner Sadler: Just a second; I am in charge of this hearing. If it is relevant to the issues I would like to have it.

The Witness: I think it is; you need not put it in the record until after you hear it. There was no competition; in fact, the hogs crowded in on that packing plant so fast that we could not kill them; we had between five and ten thousand hogs there at one time; just shoved them in on us, would not notify us even. They just shipped them in, anyhow, and we had everything in the yards crowded out, the hogs dying and escaping and everything else, at one time.

Q. Now, was that accumulation there Mr. Pidcock and that surplus of hogs, due to the fact that there was no other buyer except Swift?

A. No other buyer.

Mr. Taylor: I object to that as calling for a conclusion of the witness, Mr. Examiner.

Q. Have conditions—

Examiner Sadler: The objection will be noted.

Q. If conditions had been the same during those times as they are now, would those hogs have been taken up and put on the market and shipped to other places, or not?

1394 Mr. Taylor: I object to that as calling for a conclusion of the witness and furthermore, as based upon conditions other than the fact that Swift has acquired the Moultrie plant and is now operating it.

Q. Have any such—the witness did not answer at all.

A. I did not answer because I did not fully understand the question.

Q. Have any such conditions as you have just described ever prevailed here since Swift took charge of the plant?

A. Not that I know of.

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

Q. Now, if the capacity of the old Moultrie Packing Company had been as large as Swift's capacity is, could you or not have consumed those hogs as they came in?

Mr. Taylor: Mr. Examiner, I object to that as calling for a conclusion of the witness, which is not based on all the facts which exist, only a few of them, and also as irrelevant and immaterial to the issues.

By Examiner Sadler: Q. Do you know the capacity of the old Moultrie Packing plant?

A. It was along about 500 a day.

Q. Do you know the capacity of Swift?

A. It is four times as big as it was; I expect about two thousand a day.

1395 By Mr. Taylor: Q. You don't know exactly, though, do you?

A. No, I know it is four times as big as it was; therefore, I should say they could kill two thousand a day.

By Mr. Hill: Q. Now, if you could have—not you, but the old Moultrie Packing Company, if they had been able to kill say fifteen hundred to two thousand hogs a day, would this condition that you have just described have prevailed, or would you have killed the hogs out and put them on the market?

Mr. Taylor: That is objected to.

Examiner Sadler: The objection will be noted.

A. We could have taken care of them.

Q. Were you able to take care of them?

A. We were not; the hog business had outgrown our capacity, you see.

Q. Was there anybody else in the way of a buyer here to help take care of the hogs that you could not handle?

A. Champion's market would kill five or six a day, and the other butcher I think would probably kill about as many, that as all.

Q. Well, you mean by that there was no commercial buyer?

A. No, there wasnt any other buyer.

Q. Mr. Pidcock, are you familiar with the conditions now that exist since Swift & Company took charge of the plant, with reference to competition in buying?

1396 A. Yes sir.

Q. Well, has there been competition since that time; is there competition now?

A. There is strong competition, there is the stock yards, of which I am part owner.

Q. Can any packer in the United States that prefers to do it or wants to do it come here and big on and get these hogs?

A. Yes sir, and they do it.

Q. And they do it?

A. Yes sir. We bring them in, unload them, sell them, and haul them out again, to Cuba, Jacksonville, all around; it is an open market. If Swift do not pay the price, he don't get them; they lose quite a good many that way, too.

Q. Was there any—did any such condition as that with reference to buying hogs exist during the days of the old Moultrie Packing Company?

A. No, there was nobody else to buy.

Q. What is the purpose of this stock yards you speak of?

A. Why, to make competition; to give the farmers a chance to sell his hogs and cattle at the best prices. The purpose of the stock yards is, of course, gain of the owner, and to create a market whereby they can get the best prices.

Q. Do you know what the attitude of Swift & Company was with reference to the establishment of that kind of a competitive marketing system here?

1397 A. They encouraged it, by leasing us the land to build it.

Mr. Taylor: One minute, the answer to that question is yes or no.

Q. Just say do you know?

A. Yes.

Q. All right now, what was it, was it encouraging or not?

A. It was.

Mr. Taylor: Now, Mr. Examiner—one minute, please, let me get my objection on the record, before you answer your questions. I object to that question as calling for a conclusion of the witness.

Mr. Hill: I will get him to give the facts.

Mr. Taylor: Furthermore, as irrelevant and immaterial to the issues.

Q. I will get you to give the facts upon which you made that statement. Why do you say they encouraged it, did they do anything to encourage it?

A. They did.

Mr. Taylor: Have we a ruling on this?

Examiner Sadler: The objection will be noted.

A. They leased us a piece of ground near the packing plant, encouraged it in that manner, that they would be glad to have the stock yards there, probably they would not have to send as may buyers out in the field, all over the country to purchase stock, they could go there, walk across to the
1398 stock yards, and bid like anybody else.

Q. Is that buying out there fair to anybody that wishes to bid?

A. Absolutely.

Mr. Taylor: Oh, I object to that, immaterial.

Examiner Sadler: The objection will be sustained.

Q. Has Swift & Company—do they exercise any influence over the stock yards proposition out there, whereby they can manipulate it at all in the buying of hogs?

A. No sir.

Mr. Taylor: I also object to that.

Examiner Sadler: The objection will be noted.

A. That market is open to everybody, to them and everybody else; they haven't got any more pull there than you have.

Q. Are they given any preference over anybody else?

A. None whatever.

Q. Mr. Pidcock, by reason of your residence here for twenty-five years, are you familiar with the agricultural conditions here during that time?

A. Yes sir.

Q. Are you especially familiar with live stock raising in this country all during those years?

A. Yes sir.

Q. Has Swift & Company done any act either to encourage or to suppress the raising of live stock?

Mr. Taylor: I object to that as wholly immaterial.
1399 A. They have encouraged it.

Q. Encouraged it.

Mr. Taylor: To the issues here.

Examiner Sadler: The objection will be sustained.

Q. They have encouraged it?

Mr. Taylor: Now, Mr. Examiner, I move to strike out the answer on the same grounds.

A. I don't see any use of examining me any further. They are just over here to lynch Swift & Company, let them go on and do it.

Q. Well, we will proceed with it and do the best we can.

Mr. Hill: Now, Mr. Examiner, we insist upon this right,

that the testimony of the witness by put in the record, with the right of counsel on the oposite side to have his objection noted, so that the Trade Commission may pass ultimately upon its relevancy. You understand, if your Honor please, there is a vast difference between relevant testimony and testimony that has probative value. If the testimony has any probative value, whether it be little or great, it ought to go in the record. The fact that it may be of small probative value would not render it irrelevant; if it tends to illustrate the issues, even to the slightest extent, it is relevant; its probative value is ultimately for the Trade Commission to pass on; they may say it has no probative value; although it is relevant. If they do, all right; if it tends in the slightest degree to illustrate the issues, we insist upon its go-
1400 ing in the record, so that they may see whether it has probative value or not.

Examiner Sadler: I am in charge of this hearing, I have a right to stop the witness from putting personal remarks into the record.

Mr. Hill: We don't object to that.

The Witness: I did not make those remarks to go into the record.

Q. Now, I will get you to answer the question, Mr. Pidcock, did they or not encourage the raising of live stock?

A. They encouraged it in every manner they could.

Examiner Sadler: Just a second, I believe counsel wants to make an objection.

Mr. Taylor: That question is objected to, for the same reasons as specified as to the other question.

Examiner Sadler: The objection will be sustained.

Mr. Hill: Now, if your Honor please, we insist that the evidence is relevant on the question of whether or not they suppressed competition; we insist that the fact that a packer will go out into the country among the farmers and do acts which encourage the farmers to raise hogs and cows and increase production, is illustrative of the question of whether or not their motive in locating here was to suppress competition or not.

Mr. Taylor: Mr. Examiner, I would like to say for the information of counsel, who has just come into this proceeding, and I presume has not even read the complaint, that
1401 there is no allegation of suppression of competition in the buying of hogs, and that no proof has been taken in this case upon the matter of buying hogs. The suppres-

sion of competition to which the proof relates is in the matter of selling pork only.

Mr. Hill: Well, if your Honor please, we submit that the selling of any commodity is based upon the supply and the demand; if the supply is increased, if your Honor please, by the production of live stock, then the supply of pork is increased, and thereby more pork is placed upon the market, and that certainly does illustrate ultimately the question of whether or not they sought to lessen competition, even in the selling of the products. I submit that no packer that was not in good faith, and wanted to treat the public fairly and squarely, would go out on the farms of this country and increase the raising of live stock, if his purpose was to suppress competition in the selling of the finished product. The fact that they increased the demand here—I mean increased the supply—

Mr. Taylor: Mr. Examiner, I would like to call your attention to the fact that if it is the purpose of this testimony to show the increased output of Swift & Company, then it is wholly incompetent. The proper proof of that would be the records of the Moultrie branch here, as to what products they actually put out. There is no use going far afield in this case to show that they actually did increase their supply.

Mr. Hill: Our position is, if your Honor please, that
1402 Swift & Company, nor no other packer, could possibly put it out unless they had it to put out. Our position is that we wish to show by this witness and by numerous other witness, that their encouragement of live stock was not for the purpose of buying for themselves, but for anybody in the world to buy them. We expect to show that they did encourage it, and that the stock yards and the market here is open to every packer in the United States to come here and buy them, and that they were not encouraging the farmer to raise the hogs solely for the purpose of Swift's buying them.

Mr. Horton: I will state furthermore, your Honor, that I expect to call at the proper time an economist who will show the relation of production to the supply that is offered in the usual channels of trade. I cannot do that unless this evidence is allowed to come in; we will connect it up and show that the number and the production of hogs has a direct bearing upon the number of pounds of meat that is offered in the various markets. I furthermore expect to put in the record

here, if I am allowed to do so, the number of head killed by this plant during the years—the last half of 1917, the last half of 1917 and the years 1918, 1919, and 1920, and 1921 to date. I also expect to show the number of cars of products shipped from this plant as finished product.

Mr. Taylor: If that is to be done, what is the use of calling all of these witness to guess on the subject.

1402½ Mr. Hill: He is not guessing.

The Witness: I am not guessing, I am no guesser.

Mr. Hill: He is going to show by his records what Swift got of it; you can show what any other packer got if you want to do it.

Q. Mr. Pidcock, was the encouragement of the raising of hogs and cows in southwest Georgia, Northern Florida, south Alabama, on the part of Swift, been for the purpose of enabling them to buy or any other packer to buy?

A. Everybody to buy.

Mr. Taylor: Mr. Examiner, I object to that question, as assuming a fact which has been obected to, and the objection sustained. I object to it also on the ground that it calls for a conclusion of the witness, based upon an assumed fact which has been ruled out here.

Examiner Sadler: The objection will be sustained.

Q. Could anybody buy this live stock, then, this live stock, hogs and cows?

A. Yes, you or anybody else could.

Q. Which Swift & Company had encouraged the farmers to produce?

A. Yes sir.

Mr. Taylor: I object to that last question, which Swift & Company had encouraged the farmers to produce?

A. The White Provision Company goes in and buys them, and everybody else does.

1403 Examiner Sadler: The objection will be sustained.

A. There has been an open market on hogs and cattle just as on cotton or anything else.

Q. Now, of your own personal knowledge, do you know of any effort on the part of Swift & Company to increase the production of live stock?

A. I do.

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be sustained.

Q. All right, tell it.

A. I have been in the country with them—

Examiner Sadler: Just a second; the objection will be sustained.

Mr. Hill: Now, we insist, if your Honor please, that the fact that the officers of Swift & Company, that is, the alter egos of Swift, Swift's representatives, the fact that they went out into the country on various occasions on missions to encourage the raising of live stock. and the fact that this witness went with them, shows that he knows it of his own personal knowledge.

Examiner Sadler: I will have to instruct the attorney for the respondent to address his remarks to me and the record, not to the witness.

Mr. Hill: I am addressing these to you.

Examiner Sadler: And when I tell him to stop, to stop.

1404 Mr. Hill: Now, I insist that his evidence go into the record, to the effect that he ment with officers and agents of Swift, around on missions of encouragement among the farmers, to raise live stock, and that Swift also, to his own personal knowledge, to the knowledge of this witness, also distributed among the farmers all over this section pure-bred—

A. Hereford bullds.

Q. Pure-bred Hereford bulls; and pure-bred boar hogs, is that right?

A. Yes.

Q. Chickens?

A. Yes, chickens.

Examiner Sadler: Ask him the question.

Mr. Hill: Yes; I understood that you ruled it out; I just wanted to get it in the record; just wanted to get it in the record I expected the witness to testify to those facts.

Q. Now, Mr. Pidcock, do you know of your own personal knowledge that Swift & Company encouraged the raising of live stock here?

A. I do.

Mr. Taylor: That is objected to.

Mr. Hill: All right.

Mr. Taylor: As outside of the issues here.

Examiner Sadler: The objection will be sustained.

Q. Did you go on missions of encouragement?

A. I did.

1405 Q. With officers and agents—

A. Yes sir.

Q. Representatives of Swift, amongst the farmers?
A. Yes sir.
Examiner Sadler: Just a second.
Mr. Taylor: May I have an objection to all of these questions? They are all along the same line that objections have been sustained to.
Examiner Sadler: The objection will be sustained, and the motion to strike will be received.
Mr. Hill: You will permit us to accept to your ruling, will you?
Examiner Sadler: Oh, yes.
Q. Now, Mr. Pidcock, do you know of your own personal knowledge that Swift & Company distributed among the farmers of this section pure-bred bulls and pure-bred boars?
A. I do.
Mr. Taylor: That is objected to.
Examiner Sadler: Objection will be sustained.
Q. All right; do you know that they put out money among the pig clubs, in the Chamber of Commerce and various other institutions to encourage the boys and girls to raise hogs and cows?
A. Yes sir.
Mr. Taylor: That is also objected to.
Examiner Sadler: The objection will be sustained.
1406 A. They have done all of that.
Mr. Hill: Now, Mr. Examiner, I wish to state in my place as an attorney, what I expect this witness to swear to—one more question:
Q. Do you know of them giving scholarships to boys and girls in agricultural colleges?
A. They have done that.
Examiner Sadler: Just a second; just wait until he gets his objection in before—
Mr. Hill: I have not finished my question:
Q. Especially in the live stock departments of those institutions?
Mr. Taylor: That is objected to, Mr. Examiner, as outside of the issues here.
Examiner Sadler: The objection will be sustained.
Mr. Hill: Now, then, I have laid the foundation for his testimony, and showed that the witness would testify it, but in order to get it in the record, I state in my place that this witness, that I expect this witness to swear to these facts: That since Swift & Company has located in Moultrie, Georgia,

that the witness has gone on missions of encouragement to the farmers through south Georgia, encouraging them to raise hogs and cows, that along with him on those missions went agents and representatives and the alter egoe of Swift & Company; that of this witness' personal knowledge he knows that Swift has bought a large number of thor-
1407 oughbred Hereford bulls and distributed them among the farmers in this section, also distributed hogs among them, all with the view and the aim of encouraging the raising of live stock, and particular a better class of live stock. I further expect to show by the witness that one of the reasons for that was before they came here the farmers here raised what was known as the razor-back hog and the piney woods cow, and that they were unprofitable to the farmer, and that kind of live stock that Swift encouraged the raising of could be raised down here with profit to the farmer; furthermore, I expect him to swear that Swift & Company has donated several thousand dollars here, to this witness' own personal knowledge, to the Chamber of Commerce and to boys and girls around in the country, to enable them to go to agricultural colleges, and especially the live stock departments of these colleges, in an effort to educate the public on the matter of raising live stock. Furthermore, I expect to prove by this witness that he knows and has seen Swift & Company put on extensive exhibits at fairs around in the various sections of country, particularly in Colquitt county, of purebred live stock, to encourage the farmers to raise them, putting them on for the purpose of enabling the farmer to see them, examine them, and understand the difference between a good cow and a poor cow, and a good breed of hogs and a sorry breed of hogs. We insist that all of that evidence is relevant to show that Swift & Company were interested in encouraging the production of raw material, and that
1408 in increasing the raw material the finished product was necessarily increased, and that competition was not thereby suppressed.

Mr. Taylor: Mr. Examiner, I submit that all of these things which counsel stated he expected to elicit from this witness are immaterial to the issues here.

Examiner Sadler: Any further examination.

Mr. Hill: One minute:

Q. I will get you to state with reference to the stock yards here, whether or not Mr. H. McDowell, the new manager of Swift & Company here, whether or not he went to you

on several occasions and advised with you, and encouraged you and others here to put up this stock yards?

A. Yes sir, he went to me on a number of occasions.

Q. Did he or not state to you then that his reason for it was that he wanted—

Mr. Taylor: I object to these leading questions.

A. Yes.

Mr. Taylor: This witness is perfectly capable of testifying, I think.

A. Swift & Company did not put any money in it, but they encouraged us to do it.

Q. What reason did they give you for wanting a stock yards?

A. They wanted competition here; they wanted to buy stock here; said they could pay more for the stock if it was brought to the stock yards than they could by sending
1409 buyers out. Said the price of that man would have to be added, being a high priced man, and his expenses and things like that would have to be added on.

Q. What did he state with reference to competition?

Mr. Taylor: I object to counsel putting the words in the mouth of the witness; he is perfectly capable of testifying.

A. He said that would create more competition; that is what Swift & Company wanted; they wanted to come out in the open.

Mr. Taylor: Now, Mr. Examiner, I move to strike out the words as to what Swift & Company wanted, as a conclusion of the witness.

Examiner Sadler: The motion to strike will be noted.

Q. What did he state he wanted, did he state he wanted the things you have just mentioned?

A. Yes sir.

Mr. Taylor: I move to strike out this last answer as having been elicited by a grossly leading question.

Q. Mr. Pidcock, in order to meet that objection, in order to get it in the record without the question, I will get you to state in your own way what he did state to you about the stock yards.

A. Mr. McDowell, stated to me that if he had a stock yards that it would—people would ship hogs here to it that did not ship them here now, because they knew they would have the advantage of various buyers, who would buy the stock, would buy at the stock yards, instead of just hav-
1410 ing one buyer, and since that, instead of having just the one buyer, there has been a lot of buyers.

Q. What you know about it, then, is what they told you?
A. I have seen it done.
Q. I know, but what you know about Swift's desires is what Swift said they desired?
A. That is what Swift said they desired.
Mr. Hill: The witness is with you, Mr. Taylor.
Mr. Taylor: Are you through, Mr. Hill?
Mr. Hill: Yes. One more question:
Q. Mr. Pidcock, from the standpoint of competition, from the standpoint of competition in the sale of finished meat products, what change, if any, would result in that respect by changing the management of this plant?
Mr. Taylor: I object to that as calling for a conclusion of the witness.
A. I don't quite get that.
Examiner Sadler: Just a second.
Mr. Taylor: I object to it as calling for a conclusion of the witness, which must be based upon many facts not shown in the question.
Mr. Hill: I am going to prove those facts.
Mr. Taylor: Many facts not brought out in the evidence, can be only mere speculation, of no value.
1411 By Examiner Sadler: Q. Are you familiar with Swift's policies?
A. In a general way.
Q. Are you an officer of the company?
A. No, I don't own a share of the stock.
Examiner Sadler: The objection will be sustained.
Mr. Hill: I expect this witness to testify, and state in my place that the witness will testify to this, that from his knowledge of Swift's fair and open and just methods of buying and competing with all other packers in the United States, and with his methods in buying live stock, that a change in the management, a change in the policies of that company could not better conditions and could not better or increase competition nor result in the slightest benefit to the public.
A. Am I permitted to answer that in my own way?
Examiner Sadler: No Sir, the objection has been sustained.
Q. Well, now, I will ask you this, Mr. Pidcock, you stated, I believe, that you were a stockholder in the old plant?
A. Yes sir.

Q. Were the stockholders of the old plant induced by any unfair methods of Swift to sell out?

A. Absolutely none; they came—

Mr. Taylor: That is objected to as calling for a conclusion of the witness, going over ground that has been gone over repeatedly ever since this case has been started.

Q. Mr. Pidcock, what effect would it have upon com-
1412 petition in this community in the sale of hogs, and in the sale of the finished products, to impair or to put out of business Swift & Company's operations here?

A. It would kill it.

Mr. Taylor: That is objected to.

A. There would be no market.

Mr. Taylor: This question is assuming facts which are entirely indefensible, calls for a conclusion of the witness, and the wildest kind of speculation.

Examiner Sadler: The objection will be sustained.

Q. Is there any other—is there any other packer in Moultrie and this vicinity except Swift?

Mr. Taylor: I object to that.

A. Not one.

Mr. Taylor: It is wholly immaterial.

Examiner Sadler: The objection will be noted.

Mr. Hill: I expect the witness to testify, if your Honor please, that this community, this section of Georgia, is vitally interested in any order that the Trade Commission might propose; which would have the result of impairing the operations of Swift & Company or to change their methods of doing business, or to change their management, for the reason that there is no other packer here except Swift, and that Swift's methods are all fair; that there is more competition in the selling of finish products on the part of Swift
1413 than there could possibly be if he went out of business here, or if his management was changed or the operations of his business impaired.

Mr. Taylor: Mr. Examiner, if the counsel desires the witness to testify that it would be a misfortune to Moultrie if the Moultrie plant were closed up, ceased to be operated, I have no object to that, but for him to testify that that would be the effect if somebody else were substituted for Swift & Company is too wildly speculative.

The Witness: No, it is not.

Mr. Taylor: To be permissible at all here.

Q. If somebody of less financial ability, Mr. Pidcock, than

Swift were substituted here for Swift, would conditions with reference to competition be better or worse?

Mr. Taylor: Now, I object to that.

A. Aint going to be any such animal.

Mr. Taylor: It does not appear that this witness knows what the financial responsibility of Swift is, or that he has any definite information.

Examiner Sadler: The objection will be sustained.

Q. You sold your stock in the old plant to Swift & Company?

A. No, I give it away. I will tell the facts about that, I had my name on about half a million dollars' worth of paper, and I did not intend to continue it; I give my stock away so that I would not have to go on any more paper.

Q. Were you willing willing to sell?

1414 A. I was. A few months later they sold it for one and a half.

Q. When Swift & Company bought the old plant, was the rest of them willing to sell as you were?

A. Absolutely. We would have give it away.

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the witness to swear that when Swift came here, Swift was induced—

A. We induced them.

Examiner Sadler: I am going to instruct the associate counsel for Swift & Company to have his witness simply answer the questions.

Mr. Hill: All right. I expect this witness to swear in answer to the questions propounded that when Swift bought the old Moultrie Packing Company, all the stockholders in the old plant were willing to sell, they were not coerced, they were not unduly influenced by Swift & Company to sell, but that it was a situation such as is contemplated by a fair trade, that is, a willing seller and a willing purchaser.

Mr. Taylor: All of which is entirely irrelevant to the issues.

Mr. Hill: We insist that we want this to go in the record for whatever it is worth; if it would be worth anything, we want the Trade Commission to know our views of it; that Swift & Company, in our judgment having been charged with lessening competition in the sale of its meat products,

1415 the fact that they used no unjust means or unfair means in acquiring this plant, the fact that the old stock com-

pany, the old corporation were willing to sell, and anxious to sell, is illustrative of the question of Swift & Company's intention in coming here.

Examiner Sadler: Is there any other direct examination of the witness?

Mr. Hill: I think that is all.

Cross-Examination by Mr. Taylor.

Q. Now, Mr. Pidcock, I believe you say you have lived twenty-five years in Moultrie?

A. Yes sir.

Q. Therefore know all about the stock conditions in the territory from which the Old Moultrie Company bought its stock?

A. Yes sir.

Q. Going back only so far as the Moultrie company organized, just when did it start?

A. The old Moultrie Packing Company?

Q. Yes, just when did it start business?

A. We organized in 1913 or '14, along there.

Q. Do you recall just when it started business?

A. Yes sir, it was in the fall of 1914, when the plant was completed and we commenced operations.

Q. And at that time what was the hog situation in the country?

A. Well, we figured—let me tell that in my own way; 1416 we figured that we could get ten thousand hogs the first year, we could make expenses; we got that many and a few more.

Q. Found plenty of hogs all about here, didnt you?

A. No, the hogs then, you know, was scattering, wasnt near as much hogs as there has since been; some people had raised hogs that year in anticipation of the plant.

Q. And hogs had been raised more or less for quite a number of years before that, hadnt they?

A. Just for home consumption.

Q. Just for home consumption? By home consumption you mean to include the small towns around in this general territory of about a hundred miles circle?

A. I dont know whether you know much about the south or not, but the people raising the hogs would kill them and try to save them; sometimes they would lose them by warm weather, sometimes they would get by with it.

Q. They would smoke a large part of the meat, and eat what they could unsmoked, fresh and cured?

A. Yes sir.

Q. The butcher shops in the towns would also sell out the meat from the hogs?

A. Yes sir.

Q. So that there was quite a little consumption here locally, I mean just in this territory, by the people who live here?

A. Well, there was; they would raise more than
1417 enough for themselves, because they counted on losing a part of the meat, which they generally did.

Q. And they raised enough to feed the people in town?

A. Oh, yes.

Q. That is, there was very little pork products imported into this general territory?

A. Well, salt pork was, oh, yes, salt pork always has been, but—cured meat, to; now, fresh meat was not imported into the territory.

Q. You mean dry salt meat?

A. Dry salt meat, hams, and so forth.

Q. And then the fresh pork, fresh loins, fresh hams, all that sort of thing, trimmings, sausage, that sort of thing, was raised here for the local consumption of the people, both in the country and in the towns in that district?

A. Was then and is yet.

Q. Well, today, I assume—I dont know whether it is correct or not—that a good deal of this pork is slaughtered by the Moultrie Packing Company, which in those days was slaughtered by the local butchers?

A. Well, they sometimes kill their own, sometimes they buy the other fellow's; I dont know just how they do that.

Q. But the butchers still kill more or less, dont they?

A. I guess they do.

Q. And those butchers buy their hogs in the country
1418 and surrounding towns?

A. Well, they buy more of the packing plant than they do elsewhere, because people like myself demand inspected meat.

Q. I am talking now about the old days when the Moultrie plant was first started, then these butchers bought their hogs around in the country surrounding the towns in which they had their shops?

A. No, they bought from the Moultrie Packing Company; sometimes killed a few cows.

Q. Now, I am talking now about the days when you first started, back in 1913?

A. The butchers did just like they are doing today, they bought from the Moultrie Packing Company; they buy from Swift & Company today; you will find that out if you go and ask them fellows over there; we want inspected meat, you know.

Q. Before the Moultrie Packing Company was started here they butchered most of their own meat, didn't they?

A. That is the only way they could get it.

Q. And then they began gradually to buy from the Moultrie Packing Company, but there was still some buying, up to the time that Swift & Company bought the stock of the Moultrie Packing Company?

A. Just about like there is now, just about the same on the farm as there is now.

Q. Do you mean to say that as large a percentage
1419 of the fresh meat was furnished to the butchers in the towns within a hundred miles circle of Moultrie in 1914 as there is today?

A. I dont know; you are asking me something that I could not swear to; I know that we have been running these peddler cars out of here to the different towns until recently.

Q. Who do you mean by "we"?

A. I mean the railroad, I mean hauling them out.

Q. For Swift & Company, you mean?

A. Yes sir.

Q. The Moultrie Packing Company never ran peddler cars, did they?

A. Oh, yes, they had their own cars; we would send them cars, to Atlanta and all around; we have to have a market for our meat; we could not eat it all ourselves.

Q. Now, in addition to these butchers who bought meat in this territory prior to 1916 and '17, there was no reason why buyers from the other places could not come in and buy these hogs, was there?

A. Was not anybody to come in and buy them, was nobody else had a packing plant.

Q. Well, I mean from outside?

A. But they did not come in.

Q. How about Atlanta, no reason why they should not have come in, was there?

A. But they did not.

Q. Are you sure?
1420 A. I think so.
Q. Are you sure?
A. Never hauled a car of hogs out of here.
Q. Out of Moultrie, but you have a circle here a hundred miles each way?
A. I cannot speak for the other towns, I am not speaking —I am speaking for the towns on my own railroad.
Q. You are speaking simply for Moltrie alone?
A. No, between Boston and Albany, Pelham; we never hauled any hogs out of here; that is 92 miles of railroad.
By Mr. Hill: Q. You mean towns along that road?
A. Intervening, yes.
By Mr. Taylor: Q. You dont know of any buyer for any other packing house, do you, that Swift & Company have actually brought into this territory to buy hogs?
A. I dont know whether they brought them in; I know they do come here and do buy; ever since we have had this stock yard.
Q. Yes; convenient place now to come to buy, gather stock?
A. It is a market.
Q. The hogs are gathered in from the surrounding territory and it is a convenient place for buyers from all communities to come here and buy?
A. They ship them here from all around, within a
1421 radius of a hundred miles each way and more; ship them here, and they are sold in the open market; Cuba buys quite a good many around here.
Mr. Taylor: That is all.
Mr. Hill: All right, Mr. Pidcock, we will let you go.
Examiner Sadler: The witness will be excused.
(Witness excused.)

C. B. CALDWELL was thereupon called as a witness and having been first duly sworn, testified as follows:

Cross-Examination.

Examiner Sadler: Do you want a subpoena for this gentleman?
Mr. Hill: We dont want a subpoena for him; he is here, just use him without a subpoena.
By Mr. Hill: Q. Mr. Caldwell, what is your business here?

A. I am secretary of the Chamber of Commerce.

Q. What connection have you with the Moultrie Stock Yards?

A. I was secretary of the stock yards company during the period of its formation; after that I asked to be excused.

Q. Mr. Caldwell, I will get you to state to the court what, if anything, did Swift & Company do to bring about or to put in existence the stock yards?

Mr. Taylor: I wish to object to that as irrelevant to the issues, Mr. Examiner.

Examiner Sadler: The objection will be noted.

1422 Q. Just state now in your own way?

A. As secretary of the Chamber of Commerce, I received knowledge that our board of directors were ready—that was back in May of this year—or last year—to support the building of a local stock yards here. I understood from my directors, who were leading business men here in the city, that Swift & Company were heartily in favor of the move, for the reason that under a public stock yards,—we thought a stock yards would draw live stock from a much larger radius of territory, and that in view of that fact, Swift & Company would therefore have a large amount of live stock to draw from.

Mr. Taylor: Mr. Examiner, I am loath to interrupt the witness, but it seems to me there is so much hearsay and conclusions in this answer that I ought at this time to do so, and move that the latter part of it be stricken out.

Mr. Hill: We dont insist on any hearsay. After we get through finding out what he knows, if it is based on hearsay, we will ask that it be ruled out ourselves.

Q. Now, Mr. Caldwell, I will get you to confine your testimony to what you know through talking with Swift's representatives, about what they did, whether or not they wanted —Swift & Company wanted the stock yards or not?

A. I have just stated they were entirely in favor of the establishment of the stock yards.

Q. How do you know that?

1423 A. Mr. McDowell is a member of the board of directors of the Moultrie Chamber of Commerce. All of my directors, including Mr. McDowell, attended several meetings that were called in the organization of that company, and the sale of the stock, and the final setting up of the organization of the stock yards.

Q. Was Mr. McDowell active in helping to promote the organization of the stock yards?

A. He was active in it, with every other director, attended all their meetings that we held in connection with it.

Q. Did you ever hear Mr. McDowell get up in meeting and make one of his usual eloquent speeches in support of the proposition?

A. Mr. McDowell was called on at various times in the course of these meetings to give his views of the matter, and heartily endorsed it straight through.

Q. Then what you know about Swift's efforts to bring about the organization of a stock yards was due to what you heard Swift say about it, through representatives?

A. Yes sir.

Q. Now, Mr. Caldwell, I will get you to state to the court what is the stock yards, what is its purpose?

A. The stock yards, as I conceive it, is an institution for the purpose of giving the farmer a competitive bid on all of his live stock; it was organized primarily here by the Chamber of Commerce as an institution for that purpose.

Q. Now, do the farmers and people generally all
1424 over south Georgia, Northern Florida, southern Alabama, have a competitive market here for their live stock?

Examiner Sadler: I wish you would limit yourself to Moultrie, if you would, please.

Mr. Hill: Well, I believe the telegram said this locality. Well, I dont know, I wanted to be perfectly fair with your Honor about it, let's see, the telegram, I dont know whether they meant this particular district here; I rather think they included the locality in which Swift does business.

Mr. Taylor: Swift does business all over the United States.

Mr. Hill: I mean this particular locality; we will confine—

Mr. Taylor: In the first place, buying is no part of the issues in this case.

Mr. Hill: We insist it is, you may insist that it is not. Of course, the Trade Commission may decide it is not, but I anticipate they will decide it is a very vital question. Competition is so closely connected with the production of the output of finished product, that it necessarily is relevant.

A. We have a competitive market here at Moultrie, and

that competitive market draws live stock from southeastern Alabama, west Florida, and south Georgia.

Q. I see. Well, now, Mr. Caldwell, is the buying here in Moultrie of live stock competitive in its full sense?

Mr. Taylor: I object to that as calling for a conclusion of the witness. Let him state the facts.

1425 Q. Do you know about it, do you know how they buy them out there, and sell them?

A. Yes sir.

Q. Now, state, of your own personal knowledge, what you know about that?

A. I know that when the yards open up there in the morning, that the several commission firms and Swift & Company's representatives go on the yards, and that the live stock is sold on a competitive basis.

Q. All right, do you know of your own personal knowledge that other bidders besides Swift are always on hand?

A. Yes sir.

Q. Can Swift & Company out there under the rules, under the management of the stock yards, buy stock any cheaper than anybody else?

A. No sir.

Q. Is the buying out there open and above board, and fair and just to everybody?

A. In so far as my knowledge goes it is; that is guaranteed by the integrity of the stock yards, headed by one of our leading citizens here Mr. Barber.

Q. Do you know, Mr. Caldwell, what change if any has taken place in the production of live stock through this section since Swift took charge of the plant?

A. I am familiar with the general influences that
1426 the acquisition of the plant by Swift & Company brought about, which in a word was the enlargement of the industry.

Mr. Taylor: Mr. Examiner, I move to strike out this answer as not responsive.

Mr. Hill: Well, he is going to get down and respond now.

Examiner Sadler: Motion to strike will be noted.

Q. Go ahead, Mr. Caldwell, and answer whether or not you do know whethere there has been any change in the marketing of the live stock in this section since Swift took charge of the plant?

A. Well, practically speaking, to fully and intelligently answer that question, would necessitate the fact that the

Moultrie Packing Company originally promoted hogs; that following the building of the plant the conditions were such that the farmer was encouraged to grow hogs, because of the low price of other farm crops, other farm products. The hog industry had naturally increased year after year, and finally we came to the period of this abnormal war price on cotton, when cotton went as high as forty cents; peanuts went from two hundred to two hundred and fifty dollars; sweet potatoes were selling for as high as $2.75 a bushel, and the difference in conditions then had something to do with the progress and the diminishing of the live stock industry. The southern farmer is rather unstable in his devotion to live stock, and the minute the prices go up he jumps back into cotton, and these other things, instead of continuing to raise live stock. That, I think, is a fact that has not been
1427 brought out here before. You might take the actual production of hogs all through the years for the past ten years, and it would show a gradual increase up to the time we went into the war; it might have shown,—I am not sure—diminishing there. Now, there is every indication that the live stock industry for next year will be better than any year we have had for a long time; those conditions have got to be understood; you cannot take the literal figures on the hog census and understand the situation down here.

Q. For what reasons do you base your opinion on what it will go higher next year, more live stock?

A. Well, the presence of the stock yards here, competitive bidding, the presence also of a large packing house to take care of any increased consumption which comes through the market, and the fact that the farmer knows now that his cotton prices and the prices of these other products are not going to be so high; he feels he can make some money in hogs. There is a distinct tendency to go back into the live stock game.

Q. Do you know when hogs reached their high point on production here, and when they reached the low point?

A. Off hand I don't remember; I can give it to you.

Q. During the year 1920, do you know what cotton sold for—I mean 1919, I dont mean in 1920; do you know what it was?

A. Well, it ranged from—the fluctuation on the market you know was considerable—from 25 to 35 cents.

1428 Q. All right, now, I believe you say that the southern farmer having many money crops, he naturally is in-

clined to grow the one that he thinks there is the most money in?

A. He is growing the one that he has had generations behind him of education on, that is, cotton.

Q. Now, do you know anything about the efforts on the part of Swift & Company to encourage the farmer to raise live stock since it acquired this plant?

A. I do.

Mr. Taylor: I object to that as immaterial to the issues.

Examiner Sadler: The objection will be noted.

Q. Do you know of any effort made on their part to suppress competition, either in the buying of live stock or in the selling of the finished product?

Mr. Taylor: I also object to that as calling for a conclusion of the witness.

Mr. Taylor: I asked him if he knew of his own knowledge.

Examiner Sadler: The objection will be noted.

A. I can conceive of nothing that they have done on the buying of live stock; I am not familiar with the question of the selling of live stock, of their finished products.

Q. Well, then, for this question, confine yourself to that which you know personally; in the buying of live stock, I will get you to state whether or not—can you state whether or not they have ever made any effort to suppress com-
1429 petition in the buying of live stock in Moultrie at this plant?

Mr. Taylor: I object to that, Mr. Examiner, as calling for a conclusion of the witness.

Q. I asked you if you knew that of your own knowledge, whether they had or not, whether they had encouraged live stock or not?

A. I would be compelled to answer that in this way:

Examiner Sadler: The objection will be noted.

A. It seems to me like prima facie evidence that inasmuch as Swift & Company has spent thousands of dollars in educational work through various agencies to encourage the production of live stock, is pretty good evidence that they were not trying to suppress competition.

Q. Now, I will get you to state if you know of your own personal knowledge of any expenditures they have made along that line?

A. I do, sir.

Mr. Taylor: That is objected to.

Q. All right, tell it.

A. Swift & Company have spent a number of hundreds of dollars on the Chamber of Commerce.

Examiner Sadler: The objection will be noted.

A. Swift & Company to my personal knowledge have spent a number of thousands of dollars a year in cooperation with the fair association, which they put out these Hereford bulls, pure-bred chickens; they have spent money for scholarships for encouragement of the corn and pig club work. They
1430 have contributed to the state College of Agriculture, a considerable sum of money for the development of pastures in the southeast—

Q. Pastures for what?

A. For hogs and cattle, pastures for hogs, development of pastures for hogs, and they have at all times been large and liberal factors in anything that tended to build up the agricultural interests of this country.

Mr. Taylor: I move to strike out this last statement as a conclusion.

Q. What do you mean?

Examiner Sadler: Motion to strike will be noted.

Q. What is the pig club work?

A. Well, a pig club is a development of the Federal Farm Demonstration work.

Mr. Taylor: This is all subject to my objection, is it, Mr. Examiner?

Examiner Sadler: I dont see where it is relevant to the issues of the case at all, about this pig club?

Mr. Hill: I want it to go in the record, what the pig club is, your Honor, to show what relation pig clubs have got to the production of live stock, that is the purpose. We expect the witness to show that in every school district, I might say, in this country, there is what is known as pig clubs, composed of boys, and that Swift & Company have started, even in the home and around the firesides of this country, to
1431 encourage and to educate the boys that are coming on the future, the importance of good live stock.

Examiner Sadler: I think it is all irrelevant, but I will let the other statement in, in regard to what Swift has been doing.

Mr. Hill: Well, all right.

Q. Before Swift came here, Mr. Caldwell, do you know what the conditions were with reference to raising live stock?

A. Yes sir, I do.

Q. What kind of hogs and cows did we folks raise down here?

A. Very inferior quality.

Q. What are they commonly known as, hogs?

A. Hogs were known as razor-backs.

Q. And the cows?

A. Cows as piney-woods cows.

Q. Was there any profit in the farmer raising or growing what is known as razor back hogs?

A. Well, the farmer claimed there was.

Mr. Taylor: Read that question, please?

(Question read.)

Mr. Taylor: I object to that, wholly irrelevant.

Examiner Sadler: Do you have any figures as to that point, Mr. Hill?

Mr. Hill: I will connect it up.

Mr. Taylor: Also calls for a conclusion of the wit-
1432 ness and for speculation.

Q. You know something about raising hogs?

A. No, I dont personally, but I have the knowledge as secretary of the Chamber of Commerce and a student of agricultural conditions at all time; I have the knowledge of agriculture, the efforts that have been made, and that are being made, to get the farmer to get rid of the hog that is not profitable, and to raise hogs that are; that is how profits are made in live stock in any section.

Q. Now, I will get you to state whether or not Swift & Company have encouraged the farmers, sought to educate the farmers along the line of producing or raising a better grade of hogs and cows?

A. That was the big problem that Swift & Company were confronted with immediately, in taking over this plant, the unprofitable quality of live stock, the inferior quality of live stock, and of necessity and as a matter of getting business they have spent thousands of dollars along that line. It is a problem that was more peculiar to the south, because there was not any live stock industry here.

Mr. Taylor: I move to strike out the answer as largely not responsive and as being the conclusions of the witness, and being based on hearsay.

Examiner Sadler: Motion to strike will be noted.

Q. Mr. Caldwell, are you a student of agriculture generaliy?

A. Yes sir.

1433 Q. How long have you been a student of agriculture, especially the raising of live stock?

A. Well, I was secretary of the Chamber of Commerce, having run Chambers of Commerce in essentially agricultural sections, it is my business to study it constantly; I have been in Georgia seven years, running that class of institutions.

Q. Did you study agriculture in Oklahoma also?

A. I did.

Q. Especially stock raising?

A. The stock industry as established there; of course, I studied that as one of the big fundamental industries.

Q. In Indiana, did you study it there?

A. Yes sir.

Q. Now, Mr. Caldwell, do you know, by reason of your study of the question, the difference to the farmer, the difference to the packer and the difference to the consumer in having the farmer raise good live stock and the packing house to slaughter good live stock, do you know the difference between slaughtering that kind of live stock for the public and this old razorback brand that we used to have?

A. Well, you only have to eat it to know the difference.

Mr. Taylor: One minute, I thought the answer to that would be yes or no.

A. Yes.

Mr. Taylor: As it is not to be—

1434 Mr. Hill: Yes, he said.

Mr. Taylor: I object to the question.

Q. Well, you know the difference, Mr. Caldwell?

A. Yes sir.

Q. Now, Mr. Caldwell, in that kind of live stock that was produced in this section before Swift came here, the razor back hog and the piney woods cow, was there any competition at all on the part of any packer to buy that kind of stuff?

Mr. Taylor: That is objected to.

A. I should say there was not.

Mr. Taylor: That is objected to as assuming facts not shown, calling for a conclusion of the witness, and speculative.

Examiner Sadler: The objection will be noted.

Q. Do you know—

A. I should say there was absolutely no appreciable competition.

Q. Are you familiar personally with the kind of live stock that all packers want to pack?

A. Yes sir.

Q. Well, do any of them want to pack the old razorback hog and the piney woods cow?

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

A. No, they don't, because it is unprofitable for a packer to pack into meat, the same as it is unprofitable for the farmer to grow on his place.

1435 By Examiner Sadler: Q. Do you know that it is unprofitable to packers, do you have any figures on the subject?

A. Why, I have the statement of men who are in the packing house business.

By Mr. Hill: Q. Well, and as a student of agriculture what would you say about it?

Mr. Taylor: I move to strike out the answer, then, as hearsay.

Q. As a student of agriculture, would you say —

Examiner Sadler: Just a second. The motion to strike will be sustained.

Q. As a student, then, I will get it this way, Mr. Caldwell; I will get you to give me your opinion, based upon your knowledge of agriculture, especially of stock raising, and as a student of agriculture generally, would you say that it would be as profitable to a packer to pack the old piney woods rooter hog and the piney woods cow as it would to pack the better grade of live stock such as Durocs, Poland-Chinas, Berkshires, Herefords, Hampshires, Chester-Whites, that kind of live stock?

Mr. Taylor: Mr. Examiner, I object to this as not proper subject of opinion evidence, but a proper subject for accurate computation, if it were relevant to the issues. As it is not relevant, I also object to it on that ground.

1436 Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect this witness to swear, then, Mr. Examiner, that he is a student of stock raising, that he is familiar with the various breeds of live stock, that he is familiar with the old piney woods rooter hog and the piney woods cow, and that from his knowledge of these breeds of live stock, that it would be unprofitable to the farmer to raise

the razor-back hog and the piney woods cow, and unprofitable for the packer to pack either one of those classes of live stock, and that he bases his opinion upon this question solely upon his own study of agriculture and especially the breeding of these various kinds of live stock.

Q. Now, Mr. Caldwell, I will get you to state whether or not Swift & Company encouraged the farmer to do away with the razor-back hog and the piney woods cow and to go to raising a better grade of animals?

Mr. Taylor: Oh, I object to that, Mr. Examiner.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the witness to testify and state in my place that he will testify that of his own personal knowledge Swift & Company encouraged the farmer to do away with this poor class of live stock and to put on their farms, probably for the first time in this section, such hogs as Duroc Jerseys, Poland Chinas, Chester Whites, and the various better grades of hogs, and Hereford cattle, shorthorn cat-

1437 tle and such grades as that of cows, and that in his opinion, based upon his knowledge and study and experience as—in the study of agriculture and live stock raising, that when this was done competition in this section among all packers was increased in the buying of hogs and cows; and that before this was done there was no competition in the buying of these animals, for the reason that none of the packers desired to buy either one of them, and that thereby competition was increased by Swift & Company.

Q. Has this plant since it came here, Swift & Company's plant, in this locality, increased or decreased competition?

Mr. Taylor: That is objected to, Mr. Examiner, as calling for a conclusion of the witness.

Q. Increased or decreased competition in the sale of meat products?

Mr. Taylor: That is objected to, calling for a conclusion of the witness.

By Examiner Sadler: Q. Do you buy and sell meat?

A. No sir.

Examiner Sadler: The objection will be sustained.

By Mr. Hill: Q. Well, now, let's see if you dont have some knowledge about it that is competent.

Mr. Taylor: Well, if he has, bring out the facts.

Mr. Hill: I am fixing to fetch her forward right now.

1438 Q. Mr. Caldwell, how long have you lived here?

A. I have been here since the latter part of 1917.

Q. Have you had occasion to know about whether or not there was more or less meat products or various products in the market here now than there was before Swift came here?

Mr. Taylor: That is objected to as wholly irrelevant.

Q. There was more of them in the market?

Examiner Sadler: The objection will be noted.

A. Why, as a matter of general observation, I think that anybody can probably see more products here, yes.

Q. Of various packers?

A. Of all packers, yes sir.

Q. The meat products that are sold in this community, Mr. Caldwell, I will get you to state whether or not there are drummers from various packing houses over the country coming here and selling the trade here weekly, soliciting orders from the trade here?

Mr. Taylor: That is objected to as immaterial to the issues of this case.

Q. I am talking about meat products now, such as bacon, ham, and the stuff generally.

Mr. Taylor: Well, I still object to it. The issues here are whether competition between the Moultrie Packing Company and Swift & Company were eliminated by the purchase of the stock of the Moultrie Packing Company by Swift & Company.

Mr. Hill: Well, your Honor, this statute here will
1439 receive at the hands of the Trade Commission a reasonable construction.

Mr. Taylor: That is what I am expecting.

Mr. Hill: Yes sir; they will take into consideration the evil which that statute was designed to eradicate.

Mr. Taylor: That is exactly what I am expecting.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I have not got through asking the question.

Examiner Sadler: Did you finish it?

Mr. Hill: No sir.

Mr. Taylor: Pardon me, I thought you had finished your question, or I would not have interposed the objection.

Examiner Sadler: Pardon me.

Q. Mr. Caldwell, from your constantly coming in contact here with people in Moultrie, the stores, supply houses that sell meat products, do you or not know whether since Swift & Company came here that competition in the sale of finished meat products has been increased in Moultrie?

Mr. Taylor: That is objected to for the same reasons, incompetent, immaterial and irrelevant, that I objected to the previous question.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the witness, then, your Honor and I state in my place that he will testify to the fact that as secretary of the Chamber of Commerce here he comes in daily contact with the merchants, and especially that class of
1440 merchants that sell meat products, and that since Swift & Company established this plant here he has discovered and observed the fact that there is more competition in the sale of finished meat products in Moultrie than there was before; that every week drummers and representatives of other packing houses over the country, representing Armour and the other packers come here to sell and compete with Swift in the sale of finished meat products, and that before Swift came here this condiiton did not exist, to any appreciable extent.

Mr. Taylor: But they do not compete with Moultrie, because the Moultrie Packing Company—

Mr. Hill: Is out of business.

Mr. Taylor: Is out of business.

Mr. Hill: And it would be folly, and the Trade Commission will say so, to consider that statute to mean that we must limit the testimony solely to the question of whether or not competition was destroyed between Swift & Company and that plant; that would be so unreasonable as to be absolutely foolish. Of course it goes without saying that it is destroyed because it acquired the plant.

Mr. Taylor: Very glad to get that admission.

Mr. Hill: If it is a violation of the law for one plant to acquire the physical assets and the stock of another, if that bare fact alone makes a fellow guilty, why, they are guilty, but does this court think for a moment that the Trade
1441 Commission will not extend its reasoning and its investigation further than around that narrow, limited circle? The question is did it thereby lessen competition, in the spirit of this act. Under that view of the law, if your Honor please, we offer this testimony of Mr. Caldwell; and I would like to have the court to say whether or not his testimony is relevant under the act, and under the allegations of this complaint. Does you Honor hold that this man's testimony on the vital question of whether or not competition

has been increased or lessened in the sale of meat products in Moultrie would be irrelevant, when that is the allegation made in your complaint, and your telegram from the court, the Trade Commission saying confine your testimony to this locality? That is where we confine it, the suppression of competition in this locality.

Mr. Taylor: That admission is that competition is entirely eliminated between Swift and the Moultrie Packing Company.

Examiner Sadler: Well, we can get the facts here, the facts are available.

Mr. Hill: This man has testified, or will testify as I have stated there, that in this particular locality, not only is the buying of live stock increased, not only has competition increased in the buying of it, but that in the sale of the finished product, the packed article, such as bacon, hams, shoulders, and the other various things that are packed by Swift and the other packers, that competition has been increased here.

1442 Mr. Taylor: Mr. Examiner, it is a very peculiar thing, with all of the opportunities that these witnesses testify that they have to know the facts, that there is not one of them that comes in here and offers to give us any definite facts, but all of them want to give us their guesses and their conclusions.

Mr. Hill: He can object to it on that ground, and let the court say.

Mr. Taylor: I have been listening here to see if Mr. Hill would ask this man to enumerate the concerns which are selling meat any particular time, at any particular time.

Mr. Hill: I am going to try to get down to that. You understand, your Honor, I have got to find out whether he knows or not, then I will say, "How do you know it?" Then I will develop it.

Q. What is your answer Mr. Caldwell, as to whether or not in the sale of finished meat products here there has been more competition since Swift & Company came here?

Mr. Taylor: I object to that as a conclusion based upon no facts.

Q. Do you know whether or not there has been an increase or decrease in competition?

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

A. Yes sir, as a matter of general observation, I believe

that there—that other packers than Swift & Company
1443 have come into this territory, and that they are trying their best to sell their products here, just the same as Swift & Company is.

Q. How do you know that?

Mr. Taylor: I think that the answer shows that my objection is well taken, therefore, I move to strike it out.

Mr. Hill: Let's see if it is.

Examiner Sadler: The motion to strike will be noted.

Q. How do you know that?

Mr. Taylor: He has not said that he knows, he said that he believed.

Mr. Hill: The only way a man can know a thing is by believe; all knowledge is based upon believe; we dont know there is a God, but we believe it.

A. My knowledge is based on the fact that we see these various products in the butcher shops.

By Mr. Taylor: Q. What do you mean by these various products?

A. Meat products with respective brands of these companies?

Q. Which companies?

A. Armour & Company, Morris & Company, along with Swift & Company.

By Mr. Hill: Q. You say you see—

A. Do you include by your statement of packing house products provisions as well as meat, strictly meat products?

1444 Q. Yes, just meat products?

A. Just meat products?

Q. Yes, just meat products, hams, provisions generally.

A. Well, do you mean canned goods.

Q. No, canned goods might not be relevant; canned meats would be all right; you see all of them, then, stock in butcher shops, meat houses here, brands of meat put out by other people?

A. Yes sir.

Mr. Hill: The withness with you, Mr. Taylor.

Cross-Examination by Mr. Taylor.

Q. Mr. Caldwell, there are records kept at the stock yards, of the transactions there, are there not?

A. I assume as a business proposition they do that.

Q. You are secretary of the stock yards, arent you?
A. Not at the present time.
Q. You are not in touch with the stock yards at all?
A. I am from the standpoint of keeping informed of the situation out there for the benefit of the farmers.
Q. Well, now, will you tell me what records they keep up there as to the stock which comes in to the yards, and the stock, which is sold?
A. I am not fully familiar with their exact system of records in detail; from start to finish the thing I was interested in was the price of hogs when the market opens up there
1445 in the morning, because the farmers come into my office and inquire; I call up out there and get the market.
Q. You have never seen the records there, then, is that correct?
A. No, I have never seen the records.
Q. You dont know how many hogs or cattle the records show as having been sold at the stock yards?
A. I have heard some figures of approximately 24,000.
Q. I am not asking you what you have heard, I am asking you what you know from the records?
A. Well, if I wanted to get some information about the Moultrie Stock Yards, I would be likely to talk to the manager; he ought to know; I dont know; I would go to the records and find out for mself.
Q. Tell me what records are kept, if you know about those?
A. What records are kept?
Q. Yes?
A. The total of the hogs and cattle receipts are kept there, I dont know whether it is kept on a piece of white paper or a piece of yellow paper, or what it is kept on; they naturally keep records of their business.
Q. Just what do those records of the business show?
A. I don't know in detail.
Q. Do you know whether they show to whom sales are made?
A. No, I dont.
Q. Do you know whether they show the price at
1446 which sales are made?
A. No, my knowledge is from the commission men out there, who quote me over the phone.
Q. From what somebody told you?

A. Well, I dont know, who ought to know the market any better than commission men.

Q. Who are the commission men out there?

A. Hall Commission Company, Moultrie Commission Company, Young Commission Company, and Swift & Company, I presume would be considered another buyer.

Q. Do Swift & Company act as commission merchants there?

A. No.

Q. Are there any buyers aside from Swift & Company who go there and buy direct—or first, let me ask you, does Swift & Company buy direct or through a commission company?

A. I dont know whether—I presume they buy both ways—that is an assumption, I dont know that they ever actually have.

Q. Now, are there other buyers than Swift & Company that come in and buy direct?

A. These commission firms buy on order for other outside folks.

Q. But all orders for all outside buyers are placed through the commission firms, is that correct?

A. I believe that is the general practice, although now and again I hear of somebody who is not a commission firm coming out there and buying hogs off the yards, a 1447 farmer might come out there and buy feeders.

Q. Not buying through one of these commission merchants?

A. No, they would buy through the general operation of the stock yards, which operates through the commission firms.

Q. Well, now, supposing a farmer came here and wanted to buy a certain number of hogs, would he go on the exchange or whatever you call it and bid for them himself or would he go to one of these commission merchants like the Hall Commission Company and ask them to buy for him a certain number of hogs?

A. He might do either one of them.

Q. And that would be so with any buyer?

A. I believe the buyers of hogs, of a large volume, probably handle it through the commission firms.

Q. That is, all excepting Swift & Company?

A. I stated that I was not fully informed as to whether Swift & Company constantly bought through commission

firms or bought through representatives whom they send there.

Q. Now, are these three commission firms that you mentioned the only commission firms there that are operating?

A. That is all that I know of.

Q. Do you mean by that that there may be more that you dont know of?

A. I rather think that is all of them.

Q. Now, just what kind of hogs are sold there at the stock yards?

1448 A. Well, there is a better—an increasingly better grade of hogs comes into this stock yards, into this market every year, that is what I mean by better grade, better blood, and the hogs are fed out into packer weights, from 165 to 200 pounds; there is a lesser percentage of these light hogs, say running around a hundred pounds, because of the educational campaign we are trying to put on, and the farmers are feeding the hogs into number ones.

Q. You mean to say that the hogs are getting heavier that are coming in?

A. Yes sir.

Q. Is there any other change?

A. Well, better blood, better grade.

Q. Are they still peanut hogs?

A. Some of them are at certain seasons of the year; at other seasons of the year there are not.

Q. Will the records there show what are peanut fed and what are not?

A. I should not think so.

Q. Now, when do these peanut fed hogs come in, what season of the year?

A. Well, they come in on the heavy run in November, and December, along through there; those hogs are mostly farmed in, we will say along in March, April, May, they go through the fall crop and come in onto the market in

1449 November and December, along through there, you see.

Q. When are the corn-fed hogs, when do they come in, what season?

A. Well, that is not so much the season as the idea of the farmers; a great many of our farmers are of the opinion that the cheapest way to make a hog is to feed peanuts and forage crops; some few of our farmers, what I would call the better formers, have come to the conclusion that there is more profit in hard feeding, corn and forage, and eliminat-

ing the peanuts. That is mainly a matter of education. You understand they grow the peanut fed because they are easier to raise; it is simply a matter of turning the hog into the peanut field; there is no labor in that.

Q. No cost involved other than sowing the peanuts, is there?

A. That is about it, except your investment in facilities, that insure you pure drinking water for your hogs, sanitary feeds, everything of that kind.

Q. But that is necessary with the corn-fed as well as the peanut fed, isnt it?

A. Yes.

Q. Now, when will the corn-fed hogs come in, what season of the year?

A. I should say there is no particular season for them; the generally harder hogs, not necessarily corn-fed hogs, but the generally harder hogs, may come in during the sum-
1450 mer season, we will say, after the peanuts are out of the way; in other words, when the farmer has not got peanuts, he will feed these other feeds.

Q. Now, you testified that Armour and Morris and Swift were selling provisions here in Moultrie, that you saw them; that is at the present time, I assume you meant to say?

A. Well, I made the statement during the time—within the last year.

Q. Yes. Now, as a matter of fact you have also seen them ever since you came here in the fall of 1917, havent you?

A. Possibly that is true.

Q. You would not want to testify here that it was not true, would you?

A. Not that there was absolutely none of them, no.

Mr. Taylor: That is all.

Redirect Examination by Mr. Hill.

Q. Mr. Caldwell, would you or not naturally see more of Swifts' products here by reason of the fact that he is located here in this community and has helped build up the community?

Mr. Taylor: I object to the form of the question; I object to the question as assuming facts not shown.

Examiner Sadler: The objection will be noted.

Mr. Hill: I will show you facts.

Q. Has Swift & Company helped to build up this community?

1451 Mr. Taylor: I object to that as calling for a conclusion of the witness.

A. Let me answer the other question first.

Q. All right, answer it then.

A. The other question was whether or not Swift & Company sold more than other folks did or not?

Q. Yes?

A. I have no definite facts and figures to show that; I should on general appearances say that they do, although the exigencies of business might in some instances make it the contrary of that.

Q. All right. Mr. Caldwell, take the hogs generally that are sold here, I will ask you to state whether or not, if you know, that the larger per cent of them, number of them, are peanut hogs through this country?

Mr. Taylor: I object to that.

Q. If you know, I said.

Examiner Sadler: The objection will be noted.

A. I do know.

Q. All right, what are they. Are there more of them peanuts?

A. Naturally there is more peanut hogs.

Q. Can we in this country grow corn as successfully as they can in the west?

Mr. Taylor: I also object to that.

Examiner Sadler: The objection will be noted.

1452 Mr. Taylor: Irrelevant and immaterial, and calling for a conclusion of the witness.

A. Well, the agricultural census figures of the United States prove that very conclusively.

Q. What do they show, are you familiar with them?

A. They show that the South Atlantic runs fifteen to eighteen bushels; further up the country it runs twenty-five.

Q. All right; now, what reason is there, Mr. Caldwell, why a farmer down in this country is compelled to fatten his hogs on peanuts; can he raise corn successfully or not, that is, enough of it to make it profitable to feed it to hogs?

A. Well, that is somewhat of a moot question with agricultural authorities. Under the present progress in agriculture that our farmers operate here, they think maybe, in as much as he has not got very far along in experience and knowledge, that he might be able to make at least nearly as

much out of peanut fed hogs as he can make out of hard feeds. Later on, with more experience and more knowledge, I believe he will ultimately come to see that probably hard fed hogs is the most profitable.

Q. Now, I will get you to answer this question: do you know of your own knowledge whether or not Swift & Company encourages the farmer to fatten them on corn or on peanuts?

A. They conduct,—

Mr. Taylor: One minute, yes or no, is the answer to that.

A. Yes.

1453 Q. Mr. Caldwell, I probably asked my question a little bit differently than I ought to have. Do you know whether or not Swift & Company encourages the farmers to produce a hard hog? What is the difference in the meat of a hog fattened on corn and other hard substances and on peanuts, do you know?

A. Well, the meat is much firmer, cuts out much better, and it performs better in the frying pan, that is the main reason.

Q. When fattened on corn?

A. On hard feed.

Q. On hard feed; all right. Now, how does she perform in the frying pan when she is fattened on peanuts?

Mr. Taylor: I object to that as irrelevant and immaterial.

Examiner Sadler: I think this is all immaterial and irrelevant.

Mr. Hill: Well, I agree with you that maybe we ought to confine it to something bigger than the frying pan.

Q. How does she perform on the market, how does she perform when you come to sell a peanut hog?

Mr. Taylor: I object to that as calling for a conclusion of the witness, and an opinion where opinion evidence is not proper.

Q. I will get you to state, Mr. Caldwell, whether or not you know whether there is a greater demand for hard hogs, that is, meat produced from hard hogs in the market than there is for peanut hogs?

Mr. Taylor: Where?

1454 Mr. Hill: In this locality.

A. I don't know, that would be a rather difficult question to answer; it is a peculiar fact that many of our farmers who raise peanut fed hogs to sell the packers step into the store and buy western meat, western pork.

Q. What is that western stuff fed on?
A. It is fed on hard food, because they don't grow peanuts in many sections of the north.
Q. All right, then, they prefer to buy hard fed pork?
A. I don't know whether that preference extends to everybody or not.
Q. I am talking about what you know about it.
Examiner Sadler: I think this is all getting out of the issues of the case; I don't consider it relevant.
Q. I will get you to state whether or not it is true that in this country that practically all of the farmers fatten their hogs on peanuts, and then top them off with a little corn and them dump them on the market?
A. That is for the hogs that are farrowed in the spring, that is the easiest and most practical way to put them on the market, possibly, the volume of hogs that are spring farrowed.
Q. All right. Is that the typical southern hog?
A. The peanut fed hog?
Q. Yes sir. Top them off with corn to sort of fool the hog?
A. Yes, that is the typical method of fattening the hogs here.
1455 Mr. Hill: That is all.

Recross Examination by Mr. Taylor.

Q. Very fine flavored hog, also, isn't it?
A. There is a difference of opinion on that; there is a good many people that prefer the peanut hog, and a great many people that prefer the hard.
Mr. Taylor: That is all.
Mr. Hill: That is all.
Examiner Sadler: The witness is excused.
(Witness excused)
Examiner Sadler: Take a recess until 2:00 o'clock.

(Whereupon, at 1:00 o'clock P. M. July 14, 1921, a recess was taken until 2:00 o'clock P. M.)

F N S.

Vol. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1925

No. [redacted] 231

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SWIFT & COMPANY, PETITIONER,

vs.

FEDERAL [redacted] COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH JUDICIAL CIRCUIT

[redacted]

[redacted]

(31,504)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 781

SWIFT & COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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2:00 o'clock P. M.

After Recess.

Examiner Sadler: The hearing will come to order.

W. J. VEREEN was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Mr. Vereen, how long have you lived in Moultrie?
A. Since about 1986, or the county?
Q. Well, the county; did you ever live anywhere except Moultrie in this county?
Q. Yes, I moved to the county in 1891.
1456 Q. What of—what is your business, what sort of business are you in here?
A. Manufacturing.
Q. What kind of factory, cotton mill?
A. Yes. I have also got some other interests, but that is the principal one.
Q. Were you living here in Moultrie at the time that the old Moultrie packing Company was organized?
A. Yes sir.
Q. Were you a stockholder in it?
A. Yes sir.
Q. Do you know the conditions that prevailed in this county with reference to the raising of hogs and cows during the days that the old Moultrie Packing Company operated?
A. Yes; the live stock industry in this section is new; and at the time the Moultrie Packing Company was started, it was done to encourage the raising of live stock and furnish a market here for it, so that you could go out and ask the people to raise it. The character of live stock—of course it was very scrubby stuff.
Q. Well, during the days that the old Moultrie Packing Company operated here, was there any competition between that company and any other packing company here in the purchase of live stock?
Mr. Taylor: That is objected to; Mr. Examiner, as immaterial and also calling for a conclusion.
1457 Examiner Sadler: The objection will be noted.
Q. Go ahead, Mr. Vereen.

A. That question again, please.

Q. Was there any competition here between the old Moultrie Packing Company and any other packing company at that time?

A. None whatever that I know of.

Q. Were you a stockholder in the old Moultrie Packing Company?

A. Yes sir.

Q. If there had been any competition here between that company and any other packer, would you have known about it?

A. Yes sir.

Q. Were the stockholders—who composed the stockholders of the old Moultrie Packing Company, was it a local concern?

A. Local company, I think the entire stock was owned by people in this county, farmers and business men.

Q. Farmers and business men?

A. Yes sir.

Q. And professional men?

A. All lines represented.

Q. Now, at the time this old Moultrie Packing Company was sold out to Swift & Company, did the old packing company, its stockholders, were they willing to sell?

Mr. Taylor: I object to that, Mr. Examiner, irrelevant and immaterial to these issues.

Q. Did they want to sell?

1458 A. Oh, yes.

Examiner Sadler: The objection will be noted.

A. Anxious to sell.

Q. Had you been—prior to the time you sold to Swift, had you had interviews with other packers in an effort to sell it?

A. Yes sir.

Mr. Taylor: That is objected to for the same reason.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the witness to testfy, if your Honor please, that prior to the time that Swift & Company bought this plant, that the stockholders of the old plant were looking about and negotiating with other packers in an effort to sell it.

Q. Now, in the sale of this stock to Swift & Company, did Swift & Company use any unfair means to try to purchase it from you?

A. None whatsoever.

Mr. Taylor: I object to that—one minute—I move to strike out that answer, Mr. Examiner, as it was made before I had an opportunity to complete my objection; this calls for a conclusion of the witness, to decide the issue which should be decided by the Court and the Commission, and it is wholly incompetent.

Examiner Sadler: The objections will be noted.

Mr. Taylor: It is a motion to strike, the answer was made before the objection was completed.

Examiner Sadler: The motion to strike will be noted.

Q. You say you were stockholder in it?

1459 A. Yes sir.

Q. Were you, as a stockholder—were you as a stockholder willing to sell?

A. Yes sir.

Q. Were you as a stockholder together with other stockholders, looking about for a purchaser at the time you sold it to Swift?

A. Yes sir.

Mr. Taylor: That is objected to as immaterial.

Examiner Sadler: The objection will be noted.

Q. Now, after Swift took charge of the plant, Mr. Vereen, I will get you to state whether or not there has been competition here in the buying of live stock?

Mr. Taylor: Now, I object to that.

A. Yes sir.

Mr. Taylor: Mr. Examiner, as calling for a conclusion of the witness, and as the witness has proceeded to answer while I was making my objection, I move to strike out the answer.

Examiner Sadler: Motion to strike will be noted.

Q. After they took charge here, after Swift took charge of the plant and began to operate it, do you know of your own knowledge that we have had competition in the purchase of live stock?

A. I do.

Q. You do?

A. Yes sir.

1460 Q. That testimony is not based on hearsay?

A. It is knowledge, I know it to be true.

Q. Actual knowledge?

Mr. Taylor: I move to strike out the answer as being a conclusion.

Mr. Hill: All right.

Examiner Sadler: The motion to strike will be noted.

Q. Now, tell the court how you know there has been competition in the purchase of live stock from the farmers all over south Georgia.

A. Well, we established a stockyard here, and of course various buyers representing various packing companies are daily on those stockyards buying stock in competition with the local packers.

Q. Now, did that condition prevail at all during the days of the old packing plant?

A. No sir.

Q. Is there competitive buying at this stockyards?

A. Yes sir.

Q. Has any packer, Swift or any other packer, any monopoly on the purchase of live stock in this county?

A. No sir.

Mr. Taylor: I object to that.

Examiner Sadler: Objection will be noted.

Q. Or in that stockyards?

A. No sir.

1461 Q. Does Swift have to pay as much as anybody else?

A. Yes sir.

Q. Does the question of whether he buys or not depend upon his bid?

A. That is true.

Q. After Swift took charge here, Mr. Vereen, I will get you to state whether or not the plant was enlarged?

Mr. Taylor: I object to that, there are other ways of proving what was done in the way of enlarging the plant.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the witness to testify that the plant was at least—was increased in capacity at least three times, its capacity was tripled.

Mr. Taylor: Well, the records of Swift & Company will show just what was done in the way of additions to the building.

Mr. Hill: I want to know if he knows it.

Mr. Taylor: I object to that, secondary evidence of this fact.

Q. Were you familiar with the capacity of that plant before Swift purchased it?

A. Yes sir.

Q. Were you familiar with and did you have actual knowledge of its condition or of its capacity after they bought it?

A. Yes sir.

Q. Do you know from your own personal knowledge
1462 that its capacity was about tripled?

A. Yes sir.

Mr. Taylor: I object to that, Mr. Examiner, and move to strike out the answer, as not the best evidence.

Mr. Hill: Well, that meets your objection.

Examiner Sadler: The objection will be noted.

Mr. Taylor: The motion to strike also noted, or is that ruled upon?

Examiner Sadler: Yes, motion to strike will be noted.

Q. Now, Mr. Vereen, after they increased the capacity of this plant, I will get you to state to the court whether or not Swift & Company through its agents and employees here put on a program for the purpose of educating the farmers and encouraging them along the lines of stock raising?

A. They did.

Mr. Taylor: I object to that, Mr. Examiner, and ask that the witness be instructed not to answer the question while an objection is being made. I move to strike out the answer on the ground that it calls for a conclusion of the witness on matters not within his personal knowledge.

Mr. Hill: Well, I will get that.

Mr. Taylor: It calls for a conclusion of the witness on matters not upon the record, and it is wholly incompetent.

Mr. Hill: Well, I will see if I can't get it within his knowledge.

1463 Mr. Taylor: As well as irrelevant to the issues of this case.

Examiner Sadler: The objection will be sustained and motion to strike will be sustained.

Q. Mr. Vereen, are you familiar with what has been done by Swift & Company, do you have personal knowledge of what they have done to increase the raising of stock in this community?

A. Yes sir.

Q. In this county?

A. Yes sir.

Q. What you are about to say, is it based upon your personal knowledge or upon hearsay or the opinion of others?

A. Based upon personal knowledge.

Q. Based upon personal knowledge?

A. Yes sir.

Q. Now, tell the court how you know that Swift & Com-

pany has encouraged the raising of hogs and cows and things they buy there for his plant?

Mr. Taylor: I object to that as immaterial and irrelevant to the issues.

Examiner Sadler: The objection will be sustained.

Mr. Hill: I expect the testimony, if your Honor please, of the witness to be that he knows of his own personal knowledge that immediately after Swift bought this plant and enlarged it, that he did put on a program through its man-
1464 ager there, and through its other agents and employees among the farmers of this county, in an effort to encourage them to raise better live stock. I expect the witness to testify of his own personal knowledge that Swift has spent thousands of dollars in this county, sending boys and girls to school, to study this live stock raising, that it has appropriated hundred of dollars, maybe thousands, to the organization of pig clubs in this community among the boys and girls, that it started its program around the firesides in the homes of the people of this county, in an effort to educate them along the lines of stock raising, especially with a view of educating them to raise better live stock. I expect him further to testify of his own personal knowledge he knows that Swift & Company spent thousands of dollars here putting on expensive exhibits at county fairs in the way of live stock, so that the people might see them and know what kind of live stock they could profitably raise, what kind the packer could profitably pack. I expect him further to testify of his own personal knowledge that he knows that Swift & Company has spent thousands of dollars in the purchase of pure blooded Hereford bulls and distributed them all free of charge among the farmers of this country, and full blooded Duroc boards and other breeds to the pig clubs and to farmers over this county, and also that he knows of his personal knowledge that they have distributed among the farmers here pure blooded chickens, all in an effort to encourage the farmer and to educate him along the lines of pro-
1465 ducing good, first-class live stock instead of the razorback hog and the piney woods cow that they used to raise. We say that that testimony is relevant, if your Honor please, to illustrate the question of whether or not Swift & Company has lessened competition in the sale of its products, finished products, its meats; we say that the question of production is so closely allied with the sale of the finished

product that the encouragement of one necessarily illustrates what was done in the sale of the other.

Mr. Taylor: Now, Mr. Examiner, if all of these things which counsel has so ably elaborated had anything to do with the case whatever, counsel knows perfectly well that the proper way to prove how much Swift & Company has spent for all of these things is to introduce the records of Swift & Company to show their expenditures; not to call in some outside man that has heard about it.

Mr. Hill: I am introducing my witnesses, and in order to put the record right, I state in my place as an attorney that this man will testify to these facts, that they are not based upon any record, but based upon knowledge that he has personally of each and every transaction, independent of any record.

Mr. Taylor: That is not the best evidence; the records are the best evidence.

Mr. Hill: We submit, if your Honor please, that anybody that knows a fact can testify to it. Of course, if a wit-
1466 ness knows a fact only as he has seen it in a record, then unless he can testify independently of the record, his testimony is not admissible, but if he is in position to testify independent of a record, to facts lying within his own personal knowledge, then under every rule of law it is admissible.

Q. Mr. Vereen, you have been in the manufacturing business how long?

A. Why around eighteen years, twenty years.

Q. Manufacturing cotton?

A. Yes sir.

Q. Are you by reason of that fact an expert on the question of manufacture of raw materials into the finished product?

A. Yes sir.

Q. I will get you to state, Mr. Vereen, whether or not there is a direct and intimate relation between the production of the raw material and the sale of the finished product?

Mr. Taylor: That is objected to as immaterial.

Examiner Sadler: The motion will be noted—the objection will be noted.

A. Sure.

Q. Does the price of the finished product to a large extent depend upon the production of the raw material?

A. Sure.

Mr. Hill: Now, if your Honor please, the Trade Commission, I have no doubt in my mind but what they con-
1467 sider this kind of testimony, consider that it bears directly upon the issue of whether or not the allegation of this complaint is sustained or not.

Q. Mr. Vereen, do you know, have you seen Swift & Company in the act of encouraging the raising of live stock?

A. Why, without question, many times.

Q. Tell them what you have seen and known of their doing?

A. Well, in increasing the raising of live stock?

Q. Yes sir.

A. They have through the Moultrie Chamber of Commerce, an organization composed of farmers and business men, and who employ agents whose chief work is to develop live stock raising in this county; contributed funds to that; in addition to that, all the way from the manager and their stock men, they have ridden this county, attended meetings, discussed the live stock situation with the farmers in all sections of the county, and have encouraged them to raise better stock and more stock.

Q. Have you seen them do that?

A. Oh, yes.

Q. Have you been in meetings with them where they have done that?

A. Oh, yes, numbers of times. In addition to that, they have given away fine stock, or loaned it out, bulls, all over this county, to various farmers located in different sections where the various farmers could get the use of these bulls; they
have done that free of charge; they have—I remember
1468 they shipped I don't know how many chickens down here, and sold them at a very low price to encourage the poultry raising out in the country. Why, if I had time and had my wits together, I could give you a picture of what a really big corporation has done down in this county; I could give you numbers of illustrations; these just popped in my mind as I was passing along.

Q. These you have been telling, you know about them?

A. I know.

Q. You have seen it with your own eyes?

A. Absolutely. In addition to these things, we organized here a county fair, and its principal work was to develop live stock raising. I mentioned a while ago about all these chickens being shipped down here, and this fine stock being

distributed out. They leant the farmers every assistance in the world. When we organized this company it was organized for that purpose. I asked the manager of Swift & Company if they would not put a little money into it, and they stepped in—I have forgotten the amount they put in exactly, but it was at least a thousand dollars. We developed it around here; they have co-operated in every way towards developing the live stock raising in this county.

Q. Now, this stock that they have encouraged the farmers to produce—I want to ask you this question; was Swift & Company the only buyer to buy that stuff, or has there been competition in the purchase of the very thing
1469 they have encouraged the production of?

A. Yes sir.

Mr. Taylor: I object to that as having been gone into before, not only by this witness—

Mr. Hill: Would this court hold for a minute that because a defendant comes in and proves a fact by one witness, they are thereby precluded from proving it by another witness?

Examiner Sadler: The objection will be noted.

Mr. Hill: I understand that this hearing before the Trade Commission will be governed by the rules of the preponderance of evidence; if the preponderance is in favor of the respondent, necessarily they would have to hold for the respondent; we want it to preponderate.

Mr. Taylor: Not where the evidence has nothing to do with the issues. This may be very interesting, but it has nothing to do with the issues.

The Witness: I would like to say, whether it goes in the record or not, that the manager of Swift & Company told me at the time of organizing those stockyards—I personally did not want to take any stock in the stockyards unless it was going to help their interests, or rather the very interests that I have spoken of, farming, agriculture, live stock production in the county. He told me that he would be glad if I would do it, that he thought that the more competition we had the better it would be in the production of live stock, and
1470 I took some stock and others took it; Swift & Company through their manager encouraged it.

Q. That stockyards, then, served the purpose, as I understand you, of selling on a competitive market?

A. Yes sir.

Q. The live stock that Swift & Company has encouraged the production of?

A. Absolutely true, yes sir.

Q. All right. Now, if that stockyards, Mr. Vereen—

Mr. Taylor: Now, Mr. Examiner, I move to strike out the conclusions of counsel as well as of the witness.

Examiner Sadler: The motion to strike will be noted.

Q. Well, do you know that fact of your own personal knowledge, or is that based on somebody else—

A. Based on my own knowledge, I might add that through my connection with the Chamber of Commerce, I was thrown closely with this work; I have given considerable time and money to this very end.

Q. Are you one of the active directors of the Chamber of Commerce?

A. Yes sir, and chairman of the agricultural committee.

Q. Are you also an agriculturalist, Mr. Vereen?

A. No, I am not; that is the reason I laugh about that.

Q. Now, Mr. Vereen, I believe you stated that there was not any competition in buying here prior to the time that Swift & Company took charge?

1471 A. I did state that.

Q. Yes.

Mr. Taylor: No, Mr. Examiner, that is not what the witness testified to.

Q. Was there any competitive buying here before Swift took charge?

A. No sir. They shipped all the hogs in here; we bought them at the best we could pay; no competitive market. I might add that everybody here knows, and I suppose the Commission knows it,—if they don't they would like to have the facts about it—that this Moultrie Packing Company was not organized here for us to go in the line of business. It was put up here simply to increase the live stock production; we went as far as we could, and then got Swift to take it, and they have carried it on in that way.

Q. All right, now, I will ask you this question: You have testified about the sale and the competition in the purchase of live stock. What is, as raw material. What do you know, if anything, about the competition in the sale of the finished product, like hams, bacon, things like that here, put up by Swift, Armour, and any other packer; is there competition here in the sale of that, in the city of Moultrie?

A. Oh, yes, without question. I have noticed numbers of time different merchants here having Armour's meat, Cudahy's meat, other packers' meat.

Q. You mean by that having any advertising in the stores?

1472 A. Yes sir.

Q. And putting them on the market for the public?

A. Yes. In fact, you can go to any store here right now; these gentlemen can go, if they doubt that, and find these other packers' products in every store that handles meat, these different packers' meats.

Q. Then you know of your own personal knowledge that there is more competition in the sale of the finished meat product in Moultrie today than there was during the old company's days?

Mr. Taylor: I object to that, that is a conclusion of counsel entirely, the witness did not say that.

Q. I believe you said there was competition here now?

A. Oh, yes.

Q. How does it compare with what it used to be?

A. It is certainly equal.

Mr. Taylor: I also object to that.

Q. It is certainly equal?

A. It is certainly equal, and judging by what I see, every week, pick up the daily paper here and read it, you know, see the advertising of these different merchants here—in fact, if I was running a store, I think so much of what Swift & Company has done, I don't think I would handle anybody's meat but Swift's, because they have done their part in the development of this section here. In fact, when I buy any meat I call for Swift's, because I want to stand by the

1473 folks that have stood by this section and developed it.

Q. Just naturally tastes better, don't it?

A. Yes sir, it does.

Mr. Taylor: Especially if it comes from this section?

Mr. Hill: I believe the witness is with you.

Mr. Taylor: Are you through, Mr. Hill?

A. Yes sir.

Cross-Examination by Mr. Taylor.

Q. Mr. Vereen, will you please describe this competitive buying which takes place up here at the stock yards?

A. How much in detail would you like to have it?

Q. Oh, I would like to know just how it is done, how the various parties who come in here to buy hogs do it, both those that order direct, and those that place their orders through

the commission men, how it is done, describe it so we can have the picture of this competitive buying that you have been describing in general terms?

A. Well, these local hogs that are brought in in wagons, they drive them out at the stock yards, they are put in the stock pens. These different buyers—I don't know how many there are there now—possibly three or four or five, they bid on these hogs and buy them, just like I would buy a bale of cotton.

Q. Put up and sold at auction?

A. Well, that is not always done; it is sometimes
1474 done, possibly, like any other business, yes; they don't have a certain formula they have got to go through, but the fellow that offers the most money for the hogs gets them.

Q. Do they keep records there at the stock yards showing just what is done, how many hogs come in, whom they are sold to, what price they bring?

A. They keep fairly good records, I suppose they could keep them better.

Q. Do the records show all of those things?

A. What say?

Q. Do the records show all of those things, do you know?

A. Judging by the way this record is going to show it here; I would say this record don't show everything; I would say also that possibly there is some things that that record does not show.

Q. Do you know anything about the records up there; do you know just what it does show, or are you just guessing about it?

A. Well, I have not seen it recently; I have based my conclusion, that is, on the remarks made by farmers who sold stock there; having been there and seen them sell it, seen the highest bidder get the stock.

Q. And this competitive condition in the buying of stock grew up with the establishment of this stock yard here?

A. Yes sir.

Q. Did it not?

1475 A. Yes sir.

Q. Now, you spoke of the bulls which Swift had brought into this community, of which you had personal knowledge. Will you please state just exactly how many these bulls and to whom they were sold, given or loaned, or whatever the case was, in each instance?

A. I could not give you those facts in detail; if you want

that detailed information I suggest that you go to Swift & Company's records; they are scattered around the country; I can get out with you and show you numbers of bull, and numbers of people who had the bulls and who have them now.

Q. That is what I stated to counsel, that we should have this evidence from first sources.

Mr. Hill: Well, if your Honor please, we did not undertake to show every bull, and his color, just how long his tail was or his horns or other portions of his anatomy, nor just who had him, but we wished to show he was a bull, and some bull, too.

Mr. Taylor: Well, I expect we have made a whole lot of bulls here.

Examiner Sadler: There is a whole lot of bull going into this record, I think.

Mr. Taylor: I think if we get down to the real facts—

Mr. Hill: It was not to prove by him exactly the number; he may approximate it, what was the fact, that they had bulls for that purpose, that is the fact that we wanted to
1476 prove, and did distribute them.

A. That is it.

Mr. Hill: Whether one or fifty.

The Witness: In fact, if what you want is the truth about this thing, the number of bulls they distributed, and all that, I am sure, that if I fail to give you in detail the exact size, color and number of these bulls, you can easily get the truth, if that is what you want, to get the facts.

Mr. Horton: Mr. Examiner, I call your attention to the fact that when Mr. McDowell was on the stand Tuesday I tried to show by him the way in which Swift & Company had aided in live stock development. It got as far as to show that he had distributed or had aided in distributing certain pamphlets, and he had given $250 per year to pig clubs; that I was stopped there, and prevented from going any further. The next item that I had on my list was in regard to these Hereford bulls; I will be very glad to show that when I get the opportunity.

Mr. Hill: We got a man waiting to testify to all that.

By Mr. Taylor: Q. Now, Mr. Vereen, is your knowledge in regard to the chickens any more specific than it is in regard to the bulls?

A. I judge by that question you want me to answer the number of chickens they had, and who they sold each one to, and the other descriptions of those chickens. If that is the

information you want, I have not got it in detail. I
1477 know this to be a fact, that they distributed hundreds, and I don't know, maybe thousands of chickens.

Q. Do you know from positive facts from your own knowledge that they distributed one hundred chickens?

A. I do.

Q. Now, where did you learn that?

A. Where did I learn it?

Q. Yes.

A. Well, I might say to you, speaking particularly, that I remember one particular instance in this county fair, where they had all these chickens there; they distributed them all during the fair; when the fair was over the chickens were gone, I remember; I remember I tried myself to get some of those chickens, to take to my own home, and the chickens were all gone. They told me that they had distributed them; I had seen people taking them away. I did not stop to count them or take down the fellows' names that took the chickens away.

Q. Where was this, Mr. Vereen?

A. What say?

Q. Where was this?

A. Right here at this fair out here, a mile from town, just beyond the city limits.

Q. When?

A. Well, I am not certain about the year; it was the year before last or the year before that; I think this fair has
1478 been going three or four years, something like that.

Q. Do you know how many of these chickens there were?

A. How many they shipped down here?

Q. No, how many of the chickens there were that you saw out there at the fair?

A. Oh, I would say there was several hundred, but just how many I don't know in detail, I don't know exactly.

Q. You don't know—were those chickens—they belong to Swift & Company?

A. Yes sir.

Q. Do you know that Swift & Company did not take any of them back, take them away from the fair?

A. Why, they distributed all of those chickens down there, all of them, none of them were shipped back.

Q. You say they distributed them; in what way; did they give them away or sell them or loan them or what?

A. They sold them at a very reasonable price; I have forgotten off hand how much the price was, but I know at the time they were a very fine breed of chickens, and they were sold possibly cheaper than the scrubby stock chickens were sold for.

Q. What was the breed?

A. Why, they had several breeds.

Q. How did they sell them, by the pound or by the head?

A. Why, by the head, I think.

Q. Do you recall the price?

1479 A. No, I don't. I know the impression made on my mind at the time was that they were very reasonable. It is hard to keep in mind the price of chickens back two or three years ago. They have been going up so high and down so low, you know, that it is hard to keep in mind these figures. The big impression about the whole thing was at the time that they were trying to build up the raising of better poultry.

Mr. Taylor: I move to strike out the latter part of that answer as not responsive.

Examiner Sadler: The motion to strike will be noted.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Horton: Mr. Examiner, at this time I wish to offer in evidence Press Summary of the Department of Agriculture, Bureau of Census, released for use on July 12, 1921, preliminary announcement on agriculture, 14th Census, 1920, Live Stock and Live Stock Products in the State of Georgia.

Examiner Sadler: Have you any objections, Mr. Taylor?

Mr. Taylor: No.

Examiner Sadler: The statement will be received in evidence and marked Respondent's Exhibit No. 2.

(The statement was thereupon received in evidence, and marked "Respondent's Exhibit No. 2.")

Examiner Sadler: Who is the next witness?

1480 MR. T. W. VEREEN was thereupon called as a witness and after having been duly sworn, testified in substance as follows (pp. 3342-3346):

That he lived in the City of Moultrie since 1896; that he was president and manager of the Moultrie Grocery Com-

pany, a wholesale grocery house; that he knew of his own personal knowledge that since Swift & Company had been in charge of the packing business at Moultrie there has been competition in the sale of meats, that is, the finished product, meats such as hams, shoulders, sides, bacon and meats generally, between Swift & Company and other packers; that he knew this because he was buying from them and getting different prices from the different packers; that there has been more competition between Swift & Company and the other packers than there was between the old Moultrie Packing Company and the other packers before Swift came there; that Swift & Company got most of his business because their prices were less than the other packers. It causes other packers to cut their prices coming in here, on account of Swift & Company being right here on the ground. That Morris & Company and Armour & Company did business in Moultrie; that there was competition between those companies and Swift & Company; that Cudahy came there but did not come regular; that others came there but witness did not buy from them; that he bought from the above named firms all the time; that he has an opportunity to buy from them every week; that he buys from the one that is the cheapest; that everything being equal, he gives the
1481 business to Swift & Company because they are local people; that if Swift's prices are higher, he buys from the others; that there is the strongest kind of competition between them; that it is stronger right here in Moultrie than anywhere else the witness knows of.
1482 (Witness excused.)

J. H. GREEN was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct Examination by Mr. Hall.

Q. Doctor Green, how long have you lived in Colquitt County?

A. Twenty-eight years.

Q. What business, what official position do you hold in the county?

A. I am chairman of the board of County Commissioners at this time.

Q. Doctor, do you know of your own knowledge—were you a stockholder of the Moultrie Packing Company?

A. Yes sir.

Q. Do you do any farming?

A. Yes sir.

Q. Farming is chiefly your occupation now, isn't it?

A. At this time, yes sir.

Q. Do you raise live stock, cotton, corn, peanuts?

1483 A. Yes sir.

Q. Doctor, are you familiar with the conditions that prevail in this county while the old Moultrie Packing Company was buying live stock with reference to whether or not there was any competition in the buying of it then?

Mr. Taylor: I object to that as immaterial and calling for a conclusion of the witness.

Examiner Sadler: The objection will be noted.

Q. Just go ahead, Doctor.

A. Yes sir, pretty well.

Q. Was there any competition then, at all, to amount to anything?

Mr. Taylor: I ask for the same objection.

Examiner Sadler: The objection will be noted.

Q. While the old Moultrie Packing Company had it, was there much competition then?

A. No sir.

Q. Since—do you know whether Swift & Company have ever bought any live stock here while the Moultrie Packing Company was here?

A. If they ever bought a car in this country I didn't know it; never bought any hogs.

Q. After Swift & Company took charge of the plant, has there been competition in the buying of live stock here?

A. Yes sir.

1484 Mr. Taylor: I object to that for the same reasons, Mr. Examiner.

Examiner Sadler: The objection will be noted.

Q. You say there has been?

A. Yes sir.

Q. When a farmer sells his live stock here now, Doctor, does he sell them to the highest bidder at the stock yards?

A. Yes sir.

Mr. Taylor: That is objected to as immaterial.

Examiner Sadler: The objection will be noted.

Q. Is there any monopoly existing in this community on the part of Swift & Company in the buying of live stock?

A. No sir; to my knowledge they have never tried to monopolize in any way; it has been free for everybody since they have been here. And really, if I have understood them —I have been pretty close to them; they wanted competition; they wanted to make people feel like they were getting what they should have; and they didn't think they could do it and have no competition.

Q. Do you know, then, of your own personal knowledge whether or not they encouraged the means whereby competition would be produced, to-wit, the stock yards?

A. Yes sir.

Q. Now, in that stock yards, Doctor, stock, you say, are sold to the highest bidder?

A. Yes sir.

1485 Q. Doctor, since Swift & Company came here, I will get you—you are an old farmer here—not an old man, but been farming a long time, haven't you, Doctor?

A. Well, I have been farming for twenty odd years.

Q. Twenty odd years?

A. Twenty-two years.

Q. Before Swift & Company came here what kind of hogs did we have, Doctor?

Mr. Taylor: I object to that as immaterial.

Q. What did we usually call them, what were they known by all over the country?

A. Razorback piney woods rooters.

Q. Now, did they continue to be piney woods rooters and razor-backs during the time the old Moultrie Packing Company operated?

A. Well, we began to get out of it, began to improve our stock just as soon as we started.

Q. Began to encourage the farmers to raise better?

A. Yes sir.

Q. Now, when Swift & Company took charge, did they encourage the farmers and stock raisers in this section of the country to raise more stock and a better grade of stock?

A. Yes sir, that has been one of their greatest motives, brought a good many white faced bulls and just offered to give them to folks.

1486 Mr. Taylor: Mr. Examiner, without making an objection to each one of these questions, may I have the benefit of an objection?

Examiner Sadler: Yes.

Mr. Hill: Yes sir.

Mr. Taylor: Along this general line?

Mr. Hill: All right, just understand the objection is noted to each of these questions.

Mr. Taylor: Thank you, Mr. Hill.

Q. Now, Doctor, what do you know—do you know of your own knowledge that Swift & Company distributed among the farmers of this country pure bred bulls?

A. Yes sir.

Q. Did you see some of the bulls?

A. Yes sir, they tried to get me to take one, but I already had one.

Q. Do you know, then, of your own personal knowledge that Swift has encouraged the growing of better live stock and more live stock around here?

A. Yes sir.

Q. Do you know of any way they could have encouraged it that they did not encourage it, do you know of anything else they could have done that they did not do to encourage and to educate the people about good live stock?

Mr. Taylor: I wish to interpose the additional objec-
1487 tion to that that it is going into the realms of specula-
tion, beyond the knowledge of the witness.

Examiner Sadler: The objection will be sustained.

Mr. Hill: Expect the witness to testify that in his judgment and from his observation, what he saw them do, that they could not have done anything more than they did do to encourage the live stock raising.

Q. When a man furnishes a bull, doctor, he has furnished the source of production, hasn't he?

A. Well, they did that, then I know of them getting in good heifers and these short horns, white faces, they were put up there and kept for months and months, trying to sell them, place them with some of us farmers for making beef, is what they claimed.

Q. You do know of them offering to give some of them away?

A. The bulls, yes sir.

Q. Then you say that they not only put out bulls, but put out heifers?

A. They would sell the heifers, but they would sell them at a low cost; they said they hated to slaughter those heifers when this country needed them so badly.

Q. Do you know whether or not any of those bulls or heifers went into your section of the county, seen any of them in the county?

A. Mr. Hutchison, over there about two miles this side of me got one, Mr. Manier down here got one that I
1488 know of. Mr. Baker, Joe Baker, they placed—Tom McMillan; they placed a good many of them; they had about two dozen of them, they all went away from there; it took them a long time to get people to take them out.

Q. Now, tell us, if they had two dozen bulls to distribute here, would that take care of the amount, what a bull is supposed to do to produce live stock, twenty-four bulls, how many cows will one bull serve—

Examiner Sadler: I think you are getting—

Mr. Hill: I want to show that it was sufficient, that they could not have done any more, that they furnished all the bulls that the cows could accommodate.

The Witness: No, I don't think even two dozen bulls would have been sufficient, but it would have amounted to a good deal.

Q. All right, now, do you know anything about them giving away chickens at county fairs, or selling them to people?

A. Yes sir.

Q. Do you know whether or not they put on exhibits at county fairs of live stock?

A. Yes sir.

Q. Do you know whether or not there is any competition in this locality in the selling of finished meat products, like bacon, hams and shoulders?

A. Yes sir.

Mr. Taylor: May I have the same objection to that,
1489 Mr. Examiner?

Examiner Sadler: Yes.

Q. Now, you say there is competition?

A. Yes sir.

Q. How many other packers did you know about selling meat in this locality?

A. Well, I don't know of any particular one but Armour; Armour was the strongest competitor here in this place here.

Q. They do compete with Swift?

A. Yes sir.

Q. You say of your own personal knowledge, most of the meat you have bought in the last year or two has been bought from Armour?

A. That has been my information through Mr. Huber and Mr. Clay.

Q. Do you have any personal knowledge about it, did you pay any bills to them?

A. Not this year, you know, we have not bought any.

Q. I mean when you did buy?

A. Yes sir.

Q. Now, are the questions of buying those goods passed upon by the board of directors of which you are a member?

Mr. Taylor: I make no objection to this on the ground it is hearsay.

Mr. Hill: All right, the witness is yours.

Mr. Taylor: Are you through?

Mr. Hill: Yes sir.

1490 *Cross-Examination by Mr. Taylor.*

Q. How long has Armour been engaged in business here?

A. How long has Armour been engaged?

Q. Yes, that is, has he been selling meat here?

A. I could not tell you, but he has been selling meat here a good many years.

Q. Swift has too, hasn't he?

A. Yes sir.

Q. Swift & Company?

A. Yes sir.

Q. And back from the fall of 1914 up to the time Swift bought the stock of the Moultrie Packing Company, the Moultrie Packing Company was also selling meat here, wasn't it?

A. Yes sir.

Q. Do I understand you correctly that these bulls were absolutely given away, and that you refused to accept one as a gift?

A. That was my understanding, that they were given away.

Q. You refused to accept one as a gift?

A. I didn't need him; I had a good one, had a better one, I thought, than they had, I had a bull that I had paid a good price for.

Mr. Taylor: That is all.

Mr. Hill: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

1491 S. C. HOOD was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Doctor, do you live in Moultrie?
A. Yes sir.
Q. What is your position here?
A. I have been for the last year field manager for the southwest Georgia Development Association, up to June 1st.
Q. What did you do prior to that time?
A. I was for three years agricultural agent for the Georgia Northern Railroad.
Q. Before that time what did you do?
A. Up to that time, from 1903 until '17 or '18, whenever it was I came here, four years ago, I had been in the Federal Department of Agriculture.
Q. The Federal Department of Agriculture. Where were you raised, Doctor?
A. Vermont.
Q. Vermont?
A. Yes sir.
Q. Doctor, did you ever study agricultural conditions?
A. That has been my business, practically for fifteen years, southeastern conditions.
Q. Doctor, did you ever have occasion to know of your own knowledge whether or not Swift & Company here
1492 in Moultrie ever did anything to encourage the growing of live stock, through this section?
Mr. Taylor: I object to that, Mr. Examiner, Immaterial.
Examiner Sadler: I think this is all cumulative evidence.
Mr. Taylor: I think it is established in the record.
Mr. Hill: We grant you that it is cumulative, but we have not had just exactly the kind of witness that we have got now; we have got a philosopher on the stand now.
A. Yes, they have taken very active steps, by personal work and the expenditure of money, to my personal knowledge.
Mr. Taylor: Now, Mr. Examiner, I move to strike the words "very active."
Mr. Hill: Well, tell them how you know it has been active, what do you call active, what have you seen that you say is active?

Examiner Sadler: Just a second please.
A. During the time,—
Examiner Sadler: Just a second.
Mr. Taylor: Just a minute; I have a motion here upon which I ask for a ruling.
Examiner Sadler: The motion will be sustained.
Mr. Hill: What is the motion?
Mr. Taylor: To strike out the words "very active."
Q. All right, Doctor, leave off the words "very ac-
1493 tive" now, and just tell us what you have seen them do.
A. One thing is that there—they were one of the contributors in the Southwest Georgia Development Asso, ciation, which was formed in different counties.
Mr. Taylor: Mr. Examiner, may I have it understood that my objection may go to all of these questions without repeating?
Mr. Hill: Yes sir, without repeating.
Examiner Sadler: I think we are getting out of the realm of the issues of the case here.
Mr. Hill: No sir, we will come right back to it; he is going to mention a very vital fact here in a few moments; if it is not relevant you can rule it out.
A. The Southwest Georgia Development Association was formed primarily for the purpose of promoting general agricultural development and live stock, with especial reference to live stock development. That was made up of business men, railroads, Chambers of Commerce, all different counties in southwest Georgia. Swift & Company was a sustaining member to that organization, contributed to its financial support.
Q. How much did it contribute?
A. Five hundred dollars.
Q. When was that, how long ago?
A. That was started, began work say from June 1st, 1920, for the two months prior to that the organization was being shaped up, prepared.
1494 Q. Now, in addition to that, Doctor—
A. In addition to that, one of the kinds of work done by this association was the holding of bankers' meetings through their counties, interesting the banker in live stock promotion, also farmers' meetings, bringing the matter to the attention of the farmers. At those meetings, Mr. McDowell, manager of Swift & Company attended those meetings, a large number of them, with me personally, and spoke at those meetings. The particular point that he brought out

at these meetings was the fact that for forty years there had been an annual variation in the hog market, and the average of those years showed that May and September with the high periods of price; from the first of November to the first of February with the low prices the country over. The prevailing custom has been in the southeast and is yet to market the hogs during November, December and January, because they are finished on peanuts, and that is the time the fields are generally out. Mr. McDowell was stressing the point to the farmers that they should arrange their feeding to bring their hogs on the high point of the market, rather than the low point, in order to secure a higher price.

Q. Did you ever write a bulletin, Doctor, on the question of hog raising?

A. Yes.

Q. The Two Crop Hog System, known as the Two Crop Hog System?

A. Yes sir.

1495 Q. Do you know whether or not Swift & Company dessiminated the knowledge contained in that pamphlet among the people in that section?

A. That originally was published by the Colquitt County Farm Bureau. Swift & Company reprinted seventy-five thousand for distribution in Georgia, and a large number—I don't remember the number that was distributed for Alabama, but they had the Alabama and the Georgia reprint of that bulletin. I happened to know the Georgia figures; it was seventy-five thousand, but I don't remember the Alabama figures.

Q. Was that pamphlet designed for the purpose of educating the farmer about how to grow good live stock?

A. How to make money raising live stock on Georgia farms.

Mr. Hill: The witness is with you.

Cross-Examination by Mr. Taylor.

Q. Doctor Hood, this high point in the price of hogs, these two months that you have mentioned, when were they, May?

A. May and September, particularly those months.

Q. Those are the times of the year when fewer hogs coming into the market, aren't they?

A. Yes, that is the usual condition.

Mr. Taylor: That is all.

Mr. Hill: That is all.
Examiner Sadler: The witness will be excused.
(Witness excused.)

1496 H. McDOWELL was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Mr. McDowell—
A. Yes sir.
Mr. Hill: Your Honor, just one or two points I want to bring out from Mr. McDowell; I want to state to you that I don't know whether he knows enough without his records to testify or not; if he does not I won't insist on it; if he has personal knowledge of it, however, I will insist on him putting it in now, and put the records in later, to connect it up.
Q. Mr. McDowell, do you have any personal knowledge about how many bulls were placed out among the farmers here by Swift & Company?
A. Yes sir.
Examiner Sadler: Just a second; do you consider any of this—I would like to say that I don't consider this relevant to the issues of the case. I will let this in under objection.
Mr. Hill: All right, sir.
Examiner Sadler: I think there is plenty of it in there to cover it.
Mr. Hill: No—I agree with you that we have got enough of it in along that line, but the attorney for the Government made the point that we had not shown by anybody that knows
1497 the facts, the number that we distributed and what kind we distributed, and so on. We just wanted to put that in, to settle that definitely, and have it definite in the record.
Examiner Sadler: I don't consider this relevant.
Mr. Hill: I understand you don't but you have noted the objection to it.
Examiner Sadler: To call attention to the fact, to call the Commission's attention to the fact that there has been argument on it, and the attorneys for the respondent consider it very relevant.
Mr. Hill: All right. We consider it relevant, then, for this purpose, we think it is very material, the question of

whether or not they encouraged the production here of the raw material and thereby necessarily increased the production, as has been shown here, of the finished product. Now, we want to show, to meet the objection made by our friends, the extent of the encouragement, along the lines of placing bulls and boars out among the people.

Q. How many bulls, Mr. McDowell—

Mr. Taylor: I will ask an objection to all of these questions without repeating it as to each question.

Mr. Hill: That is all right, we grant you that right.

Mr. Taylor: I do that with the understanding that the examiner will consider that each question has an objection to it specifically, and whenever he feels that it should be

1498 sustained, to sustain it.

Mr. Hill: If your Honor please, we are offering this to meet the objection he made to the other, that it did not prove anything, because they didn't say how many.

Examiner Sadler: Are there records available to show the amounts?

Mr. Hill: I have just announced before I put him on that we will prove it by him if it is in his knowledge.

Examiner Sadler: If the records are available I will let him produce the records.

Mr. Hill: We promised to produce the records.

Examiner Sadler: Why not hold off until the records are put in evidence?

Mr. Hill: The only reason was I had to leave this afternoon, and perhaps would not be back tomorrow; and I just wanted to be certain I got that in to meet the objection of counsel; I do not insist on it, but if he knows irrespective of the record, I would like for him to testify, because he did distribute them.

Q. Do you know of your own knowledge the number?

A. Yes sir.

Q. How many bulls—

Mr. Taylor: Mr. Examiner, I would like to know if the records do disclose these facts?

Q. Have you got any records down there to show how many?

1499 A. I will tell you how many records we have; we could not use those records to back up this testimony, could not make it dove tail; we could find the bill out there from the man we bought these bulls, where we paid for them.

Q. It would not show the distribution?

A. I think that bill was paid in the Chicago office; they charged it to the Moultrie plant; we absorbed the Chicago office charge on our books; we then distributed these bulls and later on wiped it out after we got rid of all these bulls, gave them away or sold them, we charged off that entry to profit and loss. So that would be a very hard thing to trace. We could show the three entries, by taking the Chicago books and ours. Where we bought thirty bulls, we could show the receipt of those bulls here; we could show where we charged off that much—that charge on the Moultrie books to profit and loss; we have not a receipt for these individual bulls distributed around.

Q. I understand; well now—

A. We did take receipts, but we did not—we just kept those in memorandum form, I don't believe they could be produced.

Q. Well, those records would not show—

A. I think they have been thrown away.

Q. And I presume the records at Chicago that you would have to have to dovetail in to show the buying of them would not show whether you slaughtered them or what?

A. No sir.

1500 Examiner Sadler: This is all opinion evidence?

A. Opinion evidence? No sir; if you will let me tell the story about these bulls, I think you will accept it as the facts.

Q. All right.

A. I will tell it in my own words.

Q. All right.

A. Previous to coming to Moultrie in my present position, I personally authorized the purchase of thirty bulls from the S. & S. Ranch in Texas, to be shipped to Swift & Company, Moultrie, for free distribution to the farmers. That purchase was made and the shipment was made. When I arrived in Moultrie I found the bulls here, personally saw them, personally distributed them to the farmers of this section, principally Colquitt County. Our practice was to put the bulls out in the hands of farmers, lend them to them, upon their promise to let their neighbors have the service of those bulls for their cows. We scattered them all around, so as to give service in as many places as possible; after six months we took the bulls away from those people, and gave them to other people. We kept that up until about six months ago when we finally either gave the bulls to the farmers free of charge or sold them. We sold a few of the bulls, about six;

we sold them at a low price, about one-fifth of what we paid for them.

Q. All right, now, Mr. McDowell, that gives us the bull story. Now, about boars, do you know anything about
1501 that, pig clubs and things like that?

A. We have not distributed any boars in the manner that we distributed these bulls, but we have purchased six boars and three pure bred sows and offered them as prizes for the contestants in boys and girls pig clubs; that has been handled through the county agent here, the distribution of those classes.

Q. Now, your chickens, how many chickens did you put out to encourage the raising of pure bred poultry?

A. We have been bringing chickens in here for three years, ending last fall; we brought in the first year 500, that would be 1918; in 1919 we brought in one thousand; in 1920 we brought in 600; these were Rhode Island Reds and Plymouth Rocks.

Q. What did you do with them?

A. We offered to sell these chickens to the farmers of Colquitt County and the immediate vicinity at cost, or we gave them away. We gave away the first two years 200 of those chickens, with the understanding that the recipients of those chickens, those receiving them, were to give back to us the following fall twice as many as we gave them. And then we distributed those chickens we received back from the farmers to other farmers.

Q. All right. In addition to that, Mr. McDowell, there is one more thing I want to ask you about; if Swift & Company have put on any demonstrations to educate the farmer about how to feed hogs successfully?

A. Yes sir.

1502 Q. So that the farmer could make a profit out of the hogs?

A. Yes sir, that was our idea.

Q. You put that demonstration on in connection with whom?

A. In the fall of 1919 we fed—we purchased and fed at our Moultrie plant about four thousand pigs; that was done by ourselves, not in connection with anyone else, other than the local county agent. Our idea in feeding these pigs was to demonstrate to the local farmers that it was profitable to take pigs and feed them into packer weights, and that it was unprofitable to sell their pigs on the low winter market. Dur-

ing the year that I spoke of, we purchased fifteen thousand pigs, weighing less than one hundred pounds. We slaughtered all but four thousand, and fed the four thousand up. We kept a record as to the cost of our feeding those pigs and gave the information to visiting farmers, and to the county agent, as well as giving out the results of the feeding demonstration in newspaper articles. We sought to reach the farmer with that information.

Q. Was that an educational scheme on the part of Swift & Company?

A. Yes sir.

Q. Do you know what the capacity of the old Moultrie Packing Company was?

A. I have been told.

Q. Well, if you don't know personally I would not want you to answer it.

1503 A. I don't know personally.

Q. What is the capacity of Swift & Company now, how many hogs could you slaughter now?

A. We could slaughter by slaughtering only hogs, we could slaughter nine thousand a week, or fifteen hundred a day.

Q. All right.

A. Or we could slaughter a thousand cattle a week and six thousand hogs.

Mr. Hill: That is all.

By Mr. Taylor: Q. Would you mind completing your statement to show what the daily would be?

A. Well, nine thousand hogs per week would be fifteen hundred a day.

Q. No, in regard to the cattle?

A. One thousand cattle a week.

Q. What would that represent in the way of daily slaughtering, a thousand hogs a day?

A. 166-2/3 cattle and a thousand hogs a day; we have cooler capacity to take care of that many; it would not matter—we might kill more or less on one day or another; it would not matter materially.

By Mr. Hill: Then on a pinch you could kill as many as two thousand pigs, as far as that is concerned?

A. Oh, yes, we could kill them, but we could not keep it up more than two days in succession; all the coolers

1504 would be filled.

Q. Did you ever put on an educational scheme for

the purpose of encouraging the farmers to raise good live stock with the College of Agriculture or in connection with them?

A. We put on a feeding demonstration at our plant in the spring of 1920; the Georgia State College of Agriculture had entire charge of this feeding operation, and we furnished the facilities and financed it; one of their men was in charge of it. Their idea was to conduct a feeding demonstration with different southern feeds, so as to demonstrate to the southern farmer the feeds most valuable or most profitable to feed to hogs. We fed at that time 150 hogs, made up of ten distinct feeding systems.

Q. Was the result of that experiment, made at your expense, also dessiminated among the farmers in the way of pamphlets and otherwise?

A. Yes sir, we distributed fifty thousand pamphlets showing the results of that feeding test; those pamphlets being compiled by the State College.

Q. Were they distributed, those pamphlets?

A. Yes sir.

Q. Did you distribute any other pamphlets in an educational way to farmers around about raising hogs and cattle?

A. Yes sir.

1505 Q. Tell us about that?

A. We distributed fifty thousand copies of a pamphlet entitled the Two Crop Hog Plan, edited by Mr. S. C. Hood; that was a treatise intended to show the proper methods of raising hogs in the southeast. We also distributed in 1919 a pamphlet issued by Swift & Company's Animal Husbandry Department, entitled Grow Hogs in the South, giving similar information as to the best methods to be pursued in this special section of the country. We distributed fifty thousand copies of that pamphlet. In 1920 we distributed another issue of that same book issues by Swift & Company, amounting to fifty thousand copies.

Q. How long have you been in the packing business?

A. Twenty-five years.

Q. Do you know whether or not it is profitable or unprofitable either to the farmer to grow hogs or the packer to pack what is known as the old razorback hog?

A. It is not profitable to the packer, and from my idea of live stock raising, I don't believe it is profitable to the producer.

Q. All right, Mr. McDowell, one question I omitted to ask you; as an experienced packer, would you or not say that

there is an intimate relation between the supply of the raw material and the sale of the finished product?

Mr. Taylor: Mr. Examiner, I wish to interpose the additional objection that this calls for speculation, based
1506 upon many facts not included in the question.

Examiner Sadler: The objection will be sustained.

Mr. Hill: Well, I expect the witness to testify as an expert in this matter.

Examiner Sadler: Hasn't he got figures on it?

Q. As the result of twenty-five years, would you say as an expert in the packing business there is an intimate connection between the production of the raw material and the finished product, in respect to competition?

A. Shall I answer?

Mr. Taylor: I make the same objection to this question.

Examiner Sadler: I will note the objection.

A. There is a direct relationship; nothing could be slaughtered by the packer until the live stock had been purchased by the packer. I would like permission to elaborate on that statement.

Q. All right; you are an expert, got a right to do it.

A. I would like to say that ever since I have been at this plant, that we have only been able to use about twenty-five per cent of the capacity of the plant, on an average, and that the principal efforts of Swift & Company, directed by me, in this section of the country, has been to increase production of live stock so that we would have the opportunity of purchasing more live stock and selling more products, and covering more of the fixed expenses of this plant.

1507 Q. Would that necessarily, in your judgment as an expert, increase competition.

A. Yes sir.

Mr. Taylor: I object to that as too speculative.

Examiner Sadler: The objection will be noted.

Q. What is the situation then?

A. I would like to explain that.

Mr. Hill: I am pretty well satisfied that my friend on the other side recognizes the truth of this situation: If a man has got ten hogs to sell he has got to compete a whole lot more than if he just had one to sell; you increase your production and you have got to get out and work harder to sell it, compete more and more with the other packer; that is a necessary consequence.

Mr. Taylor: Why, I think that it is a recognized fact that

when the supply is increased, that it is easier to buy, you can buy for a better price; if that is what you want to prove, I will admit it.

Mr. Horton: If you can buy for a better price, you have to sell for a cheaper price.

Mr. Taylor: You can, but you will not necessarily do so.

Mr. Hill: We will show that we do.

A. May I add to that statement?

Q. Yes sir.

A. I would like to state that because of our inability to purchase, to increase the production of live stock, that

1508 we have brought in from the western plants from eight to twelve million pounds of packing house products each year, to take the place of this character of meat, owing to the lack of local production, and to assist us in operating the plant profitably, by covering up fixed expenses.

Mr. Taylor: Now, Mr. Examiner, this is exactly the sort of thing that should be shown by figures, as the best evidence.

Mr. Hill: I shall ask him about that.

Mr. Taylor: I therefore ask that this last answer be stricken out as not the best evidence.

Mr. Hill: We expect to put it in the record, that we will put in the figures if they are available.

Q. Have you figures on that?

A. Yes sir, they are available.

Q. Will you produce them?

A. Yes sir, if you wish them.

Examiner Sadler: If the records are available, the motion to strike will be sustained.

Mr. Hill: Well, we think it ought to be left in, with this understanding, that if it is not supported by the record, that will knock it out.

Examiner Sadler: The facts will support it by themselves.

Q. Now, when can you get those records?

A. Tomorrow; they are readily available.

1509 Q. Now, the fact that you brought in this twelve million pounds of western stuff a year, would that necessarily increase the competition in the sale of meat products, by putting that much more on the market than you could get locally?

Mr. Taylor: Read that question.

(Question read.)

Examiner Sadler: I think that is a question for the court

and commission to pass on. I don't think the conclusion of the witness would give us the facts.

Q. Well, was that put on the market in addition to your local production?

A. Yes sir.

Q. All right.

Mr. Taylor: Where?

Q. Where was it put on the market?

A. In the territory covered by our car routes.

Q. Some of it put on the market here in Moultrie?

A. That is principally in south Georgia, and west Florida.

Q. Some of that put on the market here in Moultrie?

A. Yes sir, a great deal of it.

Mr. Hill: All right, you can go, Mr. McDowell.

Examiner Sadler: Any cross examination?

Cross-Examination by Mr. Taylor.

Q. As a matter of fact, Mr. McDowell, you are continually buying western stuff to sell along with the Moul-
1510 trie meats?

A. Yes sir.

Q. And your capacity here has very little to do with your policy in that regard?

A. Because of our capacity.

Q. No, I say that your capacity here has very little, if anything, to do with your policy as to buying western meats and selling them in this market?

A. We would not bring in western meats if we had enough local production, because we do so at a distinct loss and disadvantage.

By Mr .Horton: Q. You mean an actual loss or an economic loss?

A. Actual loss.

Mr. Taylor: I move to strike out the statement that there is a loss as not responsive to the question and as wholly incompetent.

A. Maybe I did not understand you, Mr. Taylor, just what you wanted me to answer to.

Mr. Taylor: Please read the question.

(Question read.)

A. I don't see, Mr. Taylor, that that is a fair question. I will tell you why we bring in western stuff if you wish me to.

By Mr. Taylor: Q. You bring it in because you have a market for it, don't you?

1511 A. We bring it in when we are short of the same products, same averages, of local production. If we have a southern product of a certain average, we don't bring in western products of that same averages. It is to fill in the gap left by lack of local production.

Mr. Taylor: That is all for the present.

Examiner Sadler: The witness will be excused.

(Witness excused.)

C. W. ISOM was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Mr. Isom, do you live in Moultrie?

A. Yes sir.

Q. How long have you lived here, Mr. Isom?

A. About seventeen years.

Q. About seventeen years; what is your business here?

A. Meat business.

Q. Meat business; do you sell bacon, ham, shoulders?

A. Yes sir.

Q. Various other kinds of packed meats?

A. Yes, fresh meats, too.

Q. Were you here during the days of the old packing plant, Moultrie Packing Company?

A. Yes sir.

1512 Q. Have you been here since Swift has been here?

A. Yes sir.

Q. Been in business all these years, in the meat business?

A. Yes sir.

Q. I will get you to tell the court whether or not there has been more or less competition in the sale of finished meat products since Swift & Company than there was before?

Mr. Taylor: That is objected to as a conclusion.

A. I think we have stronger competition.

Examiner Sadler: I think that is for the Commission and the Court to decide.

Mr. Hill: They cannot decide something that has not been proven.

Examiner Sadler: Well, you can give the facts in there, who is on the market.

Mr. Hill: He is on the market.

Q. Are you selling daily?

A. Yes sir.

Examiner Sadler: Who is selling to him.

A. Yes sir.

Q. Do you buy them daily?

A. Yes sir.

Q. Who do you buy from?

A. I buy from Swift, Armour, Cudahy, Several different fellows.

Q. All right; now, do these various packers, Swift,
1513 Armour, Cudahy,—can you think of any other one you buy from?

A. Well, once in a while, sometimes buy a little bit from the Macon Packing Company, from Mr. Luchsinger up there.

Q. Ever buy any from Morris & Company?

A. Yes sir.

Q. All right, there is five packers.

A. Yes sir.

Q. Is there competition among these five to get your trade here in Moultrie?

A. Yes sir.

Q. Is the competition sharper, keener than it was in the days of the old Moultrie Packing Company?

Mr. Taylor: That is objected to.

Examiner Sadler: I think that is a question for the Commission and the Court to decide upon.

Q. Do these—I will get down to the facts about it, the actual facts,—tell me how they compete for it, do they or not send men here to see you, compete for the business?

A. Yes sir. Well, Mr. Luchsinger don't send out men now; he sends out a mailing list.

Q. Do as many come to see you now as they did before Swift came here, or more come?

A. Equally as many come right now.

Q. Equally as many. Do you have as many opportunities for buying meat products from various packers as you
1514 had before Swift came here?

A. Yes sir.

Q. You have been here, you say, ever since he has been here?

A. A long time before, I been here seventeen years.

Q. Do you know of any effort on the part of Swift & Company to monopolize—to suppress or lessen competition in the meat business?

Mr. Taylor: That is objected to.

Examiner Sadler: I believe that is a question for the Commission.

Mr. Hill: Oh, well, that is a substantive fact, if he knows of anything they did to prevent other people from coming here and selling, that is a substantive fact.

Mr. Taylor: Yes, but that necessitates his using his judgment and conclusions as to what the effect of that fact is.

Mr. Hill: I am asking him did they ever use any effort with him since he has been here to suppress competition?

A. No sir.

Mr. Taylor: That is also objected to for the same reasons; move to strike out the answer for the same reason.

Examiner Sadler: Motion to strike will be noted.

Q. How does the product put out by Swift & Company compare with the product put out by the old plant?

Mr. Taylor: That is objected to also, as incompetent, immaterial and irrelevant to the issues.

1515 Examiner Sadler: The objection will be noted.

Q. All right, Mr. Isom, how did they compare, is Swift's better than the old packing company's stuff or not?

A. What do you mean?

Q. Quality?

A. Quality of stuff?

Q. Yes sir.

A. Well, I expect as a whole it is, yes sir; as far as that is concerned, I believe Swift puts out better stuff today than they did ten or fifteen years ago, from any of the plants.

Q. Mr. Isom, do you butcher any cattle?

A. Yes sir.

Q. Where do you buy them?

A. All over the country; I buy some from Swift & Company, from the stock yards, out in the country.

Q. Ever buy any from the stock yards?

A. Yes sir.

Q. Is that a competitive place for buying them, are they bid for and the highest bidder gets them?

A. Yes sir.

Mr. Hill: All right, that is all.

Cross-Examination by Mr. Taylor.

Q. Mr. Isom, have you been in the butcher business during all these seventeen years you have been living in Moultrie?

1516 A. Yes sir, there might be one year of that time that I was not in the meat business.

Q. Were you in the meat business here when the Moultrie Packing Company was started back in 1914?

A. Yes sir.

Q. Did you buy some meat from the Moultrie Packing Company during those early years?

A. Yes sir.

Q. Take it say in the spring of 1917, you were buying meat from the Moultrie Packing Company then, were you?

A. Yes sir, I bought meat from them all the time they were in business, off and on; I did not buy it all, but I did off and on.

Q. Did you also buy some from Swift at that time?

A. Ever since Swift has been in business I bought some from him.

Q. You bought some from Armour at the same time?

A. Yes sir.

Q. Some occasionally from Cudahy, also?

A. Yes sir.

Q. Was the Macon Packing Company then in existence?

A. I dont remember whether it was back then or not.

Q. But you bought from Morris & Company at that time?

A. Yes sir.

Mr. Taylor: That is all.

Mr. Hill: I have a question or two.

1517 *Redirect Examination by Mr. Hill.*

Q. You continued to buy right on from all of those fellows?

A. Yes sir.

Mr. Hill: That is all.

Recross Examination by Mr. Taylor.

Q. That is, you bought from the Moultrie Packing Company up to the time Swift & Company took over the stock?

A. Yes sir.

Q. Then you bought from Swift & Company?

A. No sir, not altogether.
Q. I mean instead of buying any from the Moultrie Packing Company?
A. Yes sir.
Q. And bought from the other firms you mentioned all the time?
A. Yes sir.
Q. And bought from Swift at the same time you were buying from the Moultrie Packing Company?
A. Yes sir.
Mr. Taylor: That is all.
Examiner Sadler: The witness will be excused.
(Witness excused)
Examiner Sadler: Take a recess until tomorrow at ten o'clock.
(Whereupon, at 5:00 o'clock P. M. July 14, 1921, a recess was taken until 10:00 o'clock A. M. of the following day, July 15, 1921.)

1518 (Witness withdrawn)

F. R. PIDCOCK was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Hill.

Q. Mr. Pidcock, were you a stockholder of the old Moultrie Packing Company?
A. One of the original stockholders; yes sir.
Q. One of the organizers?
A. Yes sir.
Q. I will ask you to look at that picture there and tell the examiner whether that is a true representation of the old Moultrie Packing Company's building?
A. Yes sir. This is not the plant as it was originally erected; there is an addition made to it, which is on here.
Q. All I want to know from you, is that a correct representation of the plant as it was at that time?
A. Yes sir.
Q. There was one addition build, Mr. Pidcock?
A. That is as Swift & Company bought it.
Q. This is as Swift & Comany bought it?

1519 A. As I conceive it; the side view there is not very clear, but right from this point back, I think, is the addition.

Q. Mr. Pidcock, were you a director of the old Moultrie Packing Company?

A. Yes sir.

Q. By reason of the fact that you were a director did you know about what was being done in the operation of the plant?

A. As to the matter of policy, I was in constant touch with the situation.

Q. Are you familiar with the conditions that prevailed here during the days of the Moultrie Packing Company so far as competition was concerned in the sale of meat products in this locality?

A. Yes sir.

Q. Was there any competition between the Moultrie Packing Company and Swift & Company at the time Swift & Company purchased the Moultrie Packing Company's plant?

Mr. Taylor: I object to that as calling for a conclusion of the witness.

Examiner Sadler: I think that is a question for the Court and Commission to decide, but he can bring it out on facts.

Mr. Hill: I want to know if he knows.

Q. Do you know about it, do you know about the conditions?

A. Yes sir.

Q. All right, I will get you to state, if you know of your own personal knowledge—I will first ask you how long
1520 have you lived in Moultrie, Mr. Pidcock?

A. I have been here since 1900.

Q. Were you in position to know about the competition that existed between the Moultrie Packing Company and Swift & Company at the time the Moultrie Packing Company sold it to Swift?

A. Yes sir.

Q. Do you know that of your own personal knowledge?

A. Yes sir.

Q. Well, I will get you to state to the court then, what competition, if any, existed here between Swift & Company and the old plant in the sale of finished meat products?

A. No competition.

Mr. Taylor: Mr. Examiner, I move to strike out this answer as a conclusion.

Q. Now, tell the court why you know.

Examiner Sadler: Motion to strike will be noted.

Q. How you know there was no competition, why do you say there was none, why do you know it, what opportunities have you had for knowing it?

A. Well, Swift & Company never purchased any hogs in this section; in fact, we had no market for hogs until the Moultrie Packing Company was erected; after that time they bought all the hogs, and bought more than they really cared for.

Q. Well, then you say Swift & Company bought no hogs here at this point while the old plant operated?

1521 A. No sir.

Q. Nor cattle either?

A. Nor cattle either.

Q. Did anybody else buy cattle here besides the old Moultrie Packing Company while it existed, any other packer?

Mr. Taylor: I object to that as immaterial.

Examiner Sadler: The objection will be noted.

A. Must I answer that question?

Q. Yes.

A. No sir.

Q. Well, during the days of the old Moultrie Packing Company there was but one buyer of live stock in this community?

A. That is all, sir.

Q. Now, Mr. Pidcock, with reference to the sale of the meat by the old Moultrie Packing Company here in this locality, was there any competition between Swift & Company and the old plant in the sale of these—this meat? This meat produced by the old plant?

Mr. Taylor: I object to that as calling for a conclusion of the witness.

Examiner Sadler: I think—bring out the facts; I think that is a question—

Mr. Hill: I want to find out if there was any and then ask him how he knows it.

A. No sir, there was not; in fact, we had a sale for
1522 more meat than we could produce here; no need of any competition.

Mr. Taylor: I move to strike out the answer.

Examiner Sadler: Motion to strike will be noted.

Q. How do you know that there was no competition that amounted to anything here between Swift & Company and the old plant of the Moultrie Packing Company in the sale of

meats here in town, in this locality, any appreciable competition? How do you know there was none, were you on the ground at the time?

A. I was.

Q. Were you living here in the community at the time?

A. Yes sir.

Q. Were you familiar with the meat houses, did you ever run a meat house at that time?

A. Yes sir, I ran a market here.

Q. You did?

A. Yes sir.

Q. Well, if you ran a market here, then what were your opportunities of knowing about whether there was competition or not?

A. Well, I had to purchase meat to serve my patrons.

Q. All right.

A. I had nobody competing for the trade here in Moultrie with me as a meat market. I bought stuff from—bought stuff that the Moultrie Packing Company made from them, and bought such other products as they did not produce, as I had to have to serve the patrons of my market.

1523 Q. Well, now, during those days—how long did you run your meat house?

A. About two years.

Q. About two years. That was 1915 and '17, or '16 and '17?

A. I started in 1915, and ran until some time during 1917, April 1917, started up in June, 1915, and ran to April 1917.

Q. During that time did any representatives of Swift & Company ever come to your place and offer to sell you products in competition with the old plant?

A. No more than they always had previous to the erection of the plant.

Q. Well, did that amount to anything, was it nominal or did it amount to competition?

Mr. Taylor: I object to that as calling for the grossest kind of a conclusion.

A. No competition at all.

Examiner Sadler: I think that is a question for the court to decide.

Mr. Hill: I think that is a substantive fact, if he knows whether they came around.

A. No more so than Armour, Wilson & Company; they all

had their buyers through this country as they have now; their salesmen, they still have them here, always had them.

Q. These fellows that came in here representing other packers, selling products, did they sell products that
1524 were not produced by the old plant here, or did they sell the same things?

A. Why, principally they sold products that were not produced here; I presume they did sell some stuff that was produced here, that probably the Moultrie Packing Company could not furnish; and we had a demand for more meat than we could produce; in fact the meat that we produced out there was just a drop in the bucket.

Q. The meat produced out there was just a drop in the bucket?

A. Yes sir.

Q. Compared with what other people produced?

A. Yes sir, did not even care for a small percentage, just a very small percentage of the meat consumed in Georgia.

Q. Well, what about competition here, Mr. Pidcock, in the buying of hogs—I mean since Swift took charge of the plant, if you know?

Mr. Taylor: I object to that as calling for a conclusion of the witness.

A. We have got a competitive market here now.

Q. Do you know that or are you just guessing at it?

A. I know it, because I am a stockholder in the Moultrie Stock yards; I know that farmers have an opportunity to sell to a number of packers that they did not have at the time the Moultrie Packing Company was here and operated by local capital.

Q. Does Swift & Company have any monopoly of the buying of live stock here?

1525 A. No sir.

Q. Do you know how that stock yard is conducted?

A. In fact, we would not have had a competitive market here if Swift & Company had not bought this plant.

Mr. Taylor: Now, Mr. Examiner, I move to strike out this last statement as a conclusion pure and simple, unsupported by any facts.

Examiner Sadler: The motion to strike will be noted.

A. The people of this community were at the mercy of the Moultrie Packing Company before Swift & Company bought it.

Mr. Taylor: Move to strike that out also.

Examiner Sadler: Motion to strike will be noted.

A. They were not in position to pay the price that Swift & Company can and is paying since, because they could not handle the product, could not handle the live stock.

Q. Were you a large stockholder in the old plant, Mr. Pidcock?

A. Yes sir.

Q. Do you know of your own knowledge, did you know the condition, financial condition of the old plant about the time she sold out to Swift?

A. Yes sir.

Q. Was it able or not to take care of the situation?

A. No sir, was not.

Mr. Taylor: Mr. Examiner, I object to this as wholly incompetent.

1526 A. I was an endorser on the paper for $675,000 personally.

Mr. Taylor: Not the proper way to show financial condition, by secondary evidence.

A. If you want the facts about this community, I can give them to you; if they want to let them go in the testimony, Mr. Hill. If they just want to carry on a proceeding in favor of the Federal Trade Commission I cannot give it to you.

Q. You were a director of that company?

A. I was, yes sir.

Mr. Hill: If your Honor please, the law makes it mandatory on this man to know the financial condition of an institution of which he is a director.

Mr. Taylor: I think there is an exhibit in the record—

Mr. Hill: There aint any exhibit—

A. If I could find some of those old things, those old notes I got my name on, they would be damn good exhibits.

Mr. Taylor: There is a list of the outstanding notes in the record, of the corporation.

A. I know very distinctly, sir.

Q. You know just what you have testified, personally, independent of any record?

A. I know absolutely independent of any record whatsoever.

Q. All right. You swear to it as a fact in your own knowledge?

A. As a fact, without any recollection or anything about it, I know it.

1527 Mr. Taylor: What is this he swears to?

A. I will know it to my dying day.

Q. Now, if you know it of your own knowledge, Mr. Pidcock, I will get you to tell the court whether or not that plant was—could have survived much longer?

A. Aboslutely not.

Mr. Taylor: I object to that, Mr. Examiner.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: That is absolutely incompetent.

Mr. Hill: I will state in my place, Mr. Examiner, that this witness will testify that as a director of the corporation he had personal knowledge of its financial condition, that the plant had reached the point where it could not take care of the situation here, that it had reached the limit of its financial ability, that in order to carry on the business out there for the last year or two of its operation, the stockholders were compelled to endorse those obligations.

A. From the beginning that is true.

Q. From the beginning?

A. Until we sold it.

Mr. Hill: From the beginning they were compelled to endorse the notes and obligations of the concern.

A. The Moultrie Packing Company had no standing whatsoever as a company.

Mr. Taylor: I move to strike out that statement of 1528 the witness.

Mr. Hill: All right. That it was a concern at the time that Swift purchased it that would sooner or later have failed, and that the purchase of the plant by Swift & Company was the salvation of the packing business and the live stock industry in this community.

Q. What would have been the effect to that plant, Mr. Pidcock, if the endorsers had refused to endorse the notes?

Mr. Taylor: I object to that, Mr. Examiner.

Examiner Sadler: The objection will be sustained.

Mr. Hill: We expect the witness to testify in answer to that question that if the stockholders had not endorsed its obligations that the company could not have done business, that it would have failed, would have gone into bankruptcy: that when they first began to endorse its notes, twelve of the stockholders endorsed them, but finally they became dissatisfied with so much personal indorsement, and it dropped down to eight, and many of those were threatening not to endorse any more notes of the company.

Q. Mr. Pidcock, after the Moultrie—well, when Swift bought the plant, it goes without saying that it was true you wanted to sell?

A. We were anxious to sell.

Q. Now, after Swift bought it out, I will ask you to state whether or not commerce at this point was increased,
1529 shipping from this point was increased?

A. Very materially.

Mr. Taylor: One minute, what was that question?

(Question read.)

Mr. Taylor: I object to that, it is calling for a conclusion of the witness; furthermore, as irrelevant.

Q. All right, how do you know?

Examiner Sadler: The objection will be sustained.

Q. How do you know it was increased?

A. My personal connection with the packing company, and my connection with the railroad company.

Q. All right, now, what position did you hold in the railroad business here?

A. Vice-president and general manager at that time.

Q. Of what railroad?

A. Georgia Northern Railroad Company.

Q. Over what road were the products of this company shipped?

A. Over the Georgia Northern Railway.

Q. Over the Georgia Northern Railroad, that is the road of which you were vice-president and general manager?

A. Yes sir, at that time.

Q. When were you vice-president and general manager of the company? Were you during the days right after Swift bought it?

A. Yes sir.

Q. Right on up until recently?

1530 A. Right on up until about two years ago.

Q. During those days did you have personal knowledge of the question of whether or not commerce was increased or restrained in this community?

A. Yes sir, I did.

Q. Personal knowledge of it?

A. Personal knowledge it was increased.

Q. Now, how much increase, if any, was there in commerce here after Swift took charge of the plant?

Mr. Taylor: Now, Mr. Examiner, I object to that as not the best evidence.

A. So far as our railroad was concerned?

Q. Yes sir, I mean in the packing company's products?

Mr. Taylor: I object to that as not the best evidence, also as immaterial and irrelevant.

By Examiner Sadler: Q. Do you know the exact figures, Mr. Pidcock?

A. I'm having a statement prepared which will be in position to give you exact figures, yes sir.

By Mr. Hill: Q. Well, could you give them approximately, independent of the record?

A. Yes sir.

Q. All right, what are they?

Mr. Taylor: Now, Mr. Examiner, I object to the witness—

1531 Mr. Hill: We promise to put them in, but while he is here, I want to identify the records which we will bring in later.

Mr. Taylor: That is no way to identify the records.

Examiner Sadler: The objection will be sustained.

A. It is all a matter of record, gentlemen, we are having it tabulated for you.

Q. How long will it take to get them, Mr. Pidcock?

A. We have our whole force over there working on them now; it will take three or four days.

Mr. Hill: Well, I insist the testimony is relevant.

Q. Do you know the condition that prevailed here with reference to the sale of live stock before you had any plant here?

A. Yes sir.

Q. Could the farmers sell their products at a profit?

A. No sir.

Q. And were you a farmer?

A. Yes sir.

Q. Did you have personal knowledge of the situation?

A. Yes sir.

Q. By reason of that fact?

A. Yes sir.

Q. I will get you to state how they had to sell their products, what little they sold, if any?

A. Well, the hogs, they had to kill them and take a chance on saving the stuff, saving the meat, and selling it as

1532 finished product around from house to house, and probably to grocery stores; it was a very small amount; they generally lost fifty to sixty per cent of their meat every year through the curing season on account of the weather conditions, not prepared to care for it. What cattle they had

they would kill it out in the country, bring it in and sell it around the markets, in unsanitary condition. Once in a great while there would a fellow come in here from Texas, round up a bunch of these long horn steer and small cows and ship them out to Texas for grazing purposes, and then I presume sell them later for beef cattle.

Q. Did anybody in this country, prior to the time—

Mr. Taylor: Just a minute, I want to make a motion to strike this answer out as immaterial and irrelevant, a conclusion, and incompetent.

Examiner Sadler: Motion to strike will be noted.

Q. Mr. Pidcock did the farmers of this section—have you lived pretty close to the farmers or not, since you have been in this town, you are familiar with their conditions?

A. I worked with them constantly, in connection with my other business, farming business, too.

Q. Do you know whether or not, prior to the time that the packing business was started up here, anybody tried to raise hogs to sell?

A. We could not sell anything but cotton here, the only thing we had a market for.

1533 Q. You started to tell us about some experience of your own with twenty head of hogs, I wish you would tell us about that?

A. I had a half crop out here on the first place I opened up, took some wild land and opened it up. I had a couple of sows out there and raised ten or twenty hogs to market size. I sold nine of them over here to R. E. Champion, who was running a little meat market at the time, and sold the others, sold three of them to C. W. Isom or Isom Brothers, and the others I cut up and sold them around, a little here and there.

Q. Is that the way all of them had to sell their meat in those days?

A. Yes, that or else cure it, but I didnt want to take the chance of selling it as cured products.

Q. Are you familiar with the various plants around here, Tifton and other places?

A. Yes sir, and the extent of their success of operation.

Q. How does this plant compare to the other plants around in its ability to take care of the live stock situation in this portion of the south?

A. They have got facilities—

Mr. Taylor: That is objected to, Mr. Examiner, irrelevant, incompetent and a conclusion.

Examiner Sadler: I wish you would limit your examination to the vicinity of Moultrie.

A. In fact, if it was not for Swift & Company we
1534 would have no market in this immediate section for cattle and hogs right now.

Q. Can people in this locality sell their hogs or cattle to any other plant now except Swift, in this locality, I am talking about?

A. At this time?

Q. Yes sir?

A. None that I know of.

Q. Why?

A. They are closed down.

Q. All closed but Swift's?

A. Yes sir.

Q. And he offers the only market?

A. Yes sir, at this time. They have been selling a lot of them through—that has been going to Cuba, but that market has gone flat.

Q. Is Swift & Company a strong—I will ask you whether you know this or not: Does Swift & Company furnish a stronger competitor in this locality than the old Moultrie Packing Company did?

Mr. Taylor: Now, Mr. Examiner, I object to that, no way of proving figures.

A. There was no competition up to the time Swift and Company bought the plant.

Examiner Sadler: I think that is a question for the Commission and the court to decide.

Mr. Hill: They cannot decide that, your Honor, unless they hear somebody's testimony on it.

1535 Mr. Taylor: If you will furnish some real facts, they can decide it.

Mr. Hill: We are going to give you real facts; this man knows it to be a fact.

Q. Now, upon what facts, Mr. Pidcock do you base your statement that Swift & Company furnishes much stronger competition here than the Moltreis Packing Company? Than the Moultrie Packing Company ever did or could? Give the Commission an idea.

A. Well, previous to the time Swift & Company purchased this plant, there was no competition here.

Q. There was none?

A. No sir.

By Mr. Taylor: Q. Just what do you mean by competition?

A. Well, there was no one else to buy the products of this section, raw products, raw materials, up to the time Swift & Company bought up the Moultrie Packing Company and went into business; at the time Swift & Company bought it there was a plant over here at Tifton, one started up at Waycross, one at Chipley, one at Macon, all different independent concerns.

Q. All right.

A. One at Jacksonville.

Q. All right.

A. Andalusia, Alabama.

Q. Did those plants exist, were they in existence
1536 while the old Moultrie Packing Company was in existence?

A. I dont think any of them were in existence excepting possibly the plant at Andalusia and at Waycross, a small affair there.

Q. Now, did those houses that were in existence, those packing houses that were in existence, did they offer any competition in this locality with the old Moultrie Packing Company in the buying of hogs here?

A. After Swift & Company bought this plant?

Q. Before that time, did they buy any hogs here to amount to anything?

A. No sir.

Q. Now, since Swift has bought it, I believe you have already stated that they all come here and buy on the competitive market?

A. Yes sir, they had buyers all through this section, and Swift had buyers all through this section, and all through their section, all over the south.

Q. Were you one of the organizers and directors of the stock yards?

A. Yes sir.

Q. Stockholder in it?

A. Yes sir.

Q. Hold any position in it?

A. No sir, other than director.

Q. I mean, you were one of the directors?

A. Yes sir.

1537 Q. Do you know whether or not at the time the people of this section undertook to promote that stock

yards, whether Swift & Company encouraged it, or discouraged it?

Mr. Taylor: That is objected to as immaterial.

A. They had nothing whatever to do with it.

Q. Do you know whether or not Mr. McDowell the representative of Swift here, in the Chamber of Commerce and other places spoke in favor of it or against it?

A. In favor of it.

Mr. Taylor: That is objected to as having already been answered; and immaterial.

Examiner Sadler: The objection will be noted.

A. Been taking a very active part in all public welfare work here, in our community ever since they bought it.

Mr. Taylor: I move to strike that out.

Examiner Sadler: The motion to strike will be noted.

Q. Mr. Pidcock, you stated that Swift—since Swift took charge of it here, that there has come into being competition in this locality in the sale of meat products that did not exist before?

A. Aboslutely.

Q. I will get you to state whether or not Swift sells more of the finished meat products than your plant could have sold or more, or did sell?

Mr. Taylor: I object to that as immaterial.

Examiner Sadler: The objection will be noted.

1538 A. Would have been no plant here if they had not bought it.

Mr. Taylor: I further object to it as assuming a fact not shown.

A. Well, the fact remains there would not have been any place here if Swift had not bought it.

Q. And will you answer again, do you know whether or not they put on the market in this vicinity more of the finished product meat products, than your company did?

A. Ten to fifteen million pounds a year, yes sir.

Mr. Taylor: I move to strike that answer out as incompetent; and as not even secondary evidence.

Q. You know that of your own personal knowledge?

A. Yes sir.

By Examiner Sadler: Q. Did you ever see the figures of Swift & Company?

A. I have seen the figures of our railroad books, which is a good barometer to what they have done before and after Swift bought it.

Examiner Sadler: Motion to strike—

Mr. Taylor: I move to strike that out.

Examiner Sadler: Motion to strike will be noted.

By Mr. Hill: Q. Is your railroad the only railroad that runs in and out of Moultrie over whose lines Swift & Company ships its products?

A. No, they ship over other lines.

1539 Q. What percentage of it is shipped over your line?

A. About ninety per cent.

Mr. Taylor: I object to that.

Q. Tell the court how you know that to be true?

A. We handle every car of raw material and every car of finished products that goes in and out of Swift & Company, because their plant is located solely on our line, everything that moves out, either over our lines or anybody elses, has got to be handled by us on a switching basis, with the exception of the express, and that they handle from their plant by truck; we get the largest percentage of that, goes out by our lines. Of course I have got no check over that.

Q. For these reasons, being vice-president and general manager of a railroad, you know the facts that you have testified about?

A. Absolutely know them, yes sir. I may add further, for your information, I have got no interest in this testimony other than to uphold the welfare of our community. I am not here as a witness of Swift & Company, I am just here as a citizen of this section, trying to show you gentlemen some facts why this plant is essential to the future welfare of our section.

Mr. Hill: All right, Mr. Pidcock, you may go.

Cross-Examination by Mr. Taylor.

Q. Mr. Pidcock, are you of the impression that the Clayton law provides that where stock in a corporation is
1540 acquired in violation of the Act that the plan shall be closed up?

A. I am conversant with that proposition. I think it is a damn fool law.

Q. I asked you if you were of the impression that the law provides that the plant shall be closed up?

A. Yes sir, I do. Well, unless you can get some other people that can come in here and try it, I dont see how you can run it.

Q. Where did you get the impression that the law provides that the plant shall be closed up?

A. From the Act.

By Mr. Hill: Q. Suppose it ordered it sold in this community, what would be the result of that?

A. It would not be purchased by anybody here.

Q. Would that mean the closing of it?

A. It would so far as the people of this community are concerned, because they are not able to buy it. It was the best day's work that we ever done as a community when we built that plant, and I might say, if I can find words to express it, it was a better day when we sold it.

Q. You mean it was better for the stockholders of the old plant, better for commerce and better for competition?

A. Better for everybody that lives in this section; the purchase of the plant by Swift & Company has affected
1541 the values of everything we have here. My understanding is that if the Federal Trade Commission decides this case that you are now trying against Swift & Company, that they will have to cease to operate it, and offer the plant for sale, and in case they cannot sell it to other parties, then the plant will be operated under a receivership until such disposition as the Trade Commission may see fit to make of it. I believe it will be ultimately closed down under those conditions.

By Mr. Taylor: Q. Mr. Pidcock, where did you obtain the understanding of the Act which you have?

A. I read the Act, sir.

Q. Did anybody tell you?

A. No sir.

Q. That it meant what you have just said it means?

A. No sir. What caused me to read it was I understood that if the case went against Swift & Company the old stockholders would have to purchase it back. I wanted to find out if that was true; and I was going to get rid of every damn thing I had, because I didnt want it, would not take it if you would give it to me, all of it. I further know this about the proposition of the purchase of this plant, under the meaning of that Act. If Swift & Company had purchased this property as property instead of stock from the stockholders, there would never have been this case up. In other
1542 words, this case is just brought on a technicality. In other words, if—in other words, gentlemen, Swift &

Company did not want to buy this plant if there was an objection of a single stockholder.

Mr. Hill: No.

Mr. Taylor: That has got nothing to do with the proposition.

Mr. Hill: Now, if your Honor please, we insist that the only way in this world that human intent can be ascertained is by human conduct, and if Swift was induced to buy this plant, and proceeded to buy it, by the stockholders of the old plant, that conduct on the part of Swift is certainly admissible to illustrate the question of whether or not he come with a legal or illegal design.

By Mr. Hill: Q. Now, Mr. Pidcock, how do you know—I ask about facts now, not conclusions, do you know of your own personal knowledge, if you, as one of the directors of that company, and the other directions in conjunction with you, sought out Swift in order to induce him to buy this plant?

A. Yes sir.

Q. Did you seek to sell it to others than Swift?

A. Yes sir.

Q. How many others?

A. I dont know how many air castles we built.

Q. Figuring you had about sold it to this fellow and that fellow?

1543 A. Yes sir.

Q. Did you try to sell it to other fellows besides Swift?

A. Yes sir.

Q. Did you try to sell it to Wilson & Company?

A. Yes sir.

Q. Armour & Company?

A. Not directly; we had—felt them out though, indirectly.

Q. Well, that is, undertaking to find out whether you could sell it or not?

A. Yes sir, we sought all possible purchasers out, because we realized that we could not continue to care for the live stock and hogs grown in this section, unless somebody else, that had more financial backing than we could get, would step in and take hold of it.

Q. Swift is the only one you could get to buy it?

A. Yes sir.

Mr. Taylor: Mr. Examiner, may I have it understood that I have an object to all this line of questioning?

Examiner Sadler: Yes.

A. I further know that Swift & Company came in this section with the intent and purpose of developing the live stock industry, not to strangle competition, if you want to get the true facts, if he dont strike them out.

By Mr. Taylor: Q. Are you an officer of Swift & Company?

1544 A. What say?

Q. Are you an officer of Swift & Company?

A. No sir.

Q. How do you know what the policy was then?

A. How do I know what the policy was? By their actions, sir, what they have done at that time, what they have done out there since they have been here.

By Mr. Hill: Q. That is the only way you can judge anybody's policy, isnt it?

A. That is the only way you can judge anybody; I know that. Gentlemen, that is not conclusions; in fact, I worked with some of their men here personally, going over this country with them.

Q. All right, go ahead and tell about that?

A. Seeking out the ways and means that we could increase the production of live stock.

Mr. Taylor: I object to all of this. All irresponsive to any question, not in response to any question.

Mr. Hill: What is the ground of objection?

Q. Now, Mr. Pidcock, do you know of your personal knowledge that Swift & Company, coming here, did acts to encourage competition and encourage commerce?

Mr. Taylor: I object to that as calling for a conclusion of the witness, not calling for any facts, but calling for a statement of what the witness thinks about something else.

A. It aint what I think, it is what I know they did;

1545 I know it from my personal knowledge.

Q. Tell the court what they did, then, instead of your conclusions, to encourage competition?

A. Encouraged production.

Q. Production, that is one of the ways.

A. They have never put a stumbling block in anything in this community, as the people have tried to do to increase the production of live stock or the sale of it, of its raw products or finished products; in fact, they have encouraged and helped in a commercial way.

Q. How, tell me what they have done?

A. Through the Chamber of Commerce.
Q. What did they do for the Chamber of Commerce?
A. They have contributed this past year one tenth of the money this Chamber of Commerce is running on.
Q. How much does that amount to?
A. A thousand dollars.
Q. Do you know that?
A. Yes sir.
Q. How do you know that?
A. I am president of the Chamber of Commerce of Moultrie.
Q. What has that been used for, that mony?
A. Why, to develop not only the live stock industry, but the agricultural sections and the building of the schools, with the hope of some day making our country, the rural
1546 section, fit for the people of the west and north to come down in here and show us how to raise live stock, and encourage the raising of hogs and cattle.
Q. All right, now, you know that?
A. It is a program, gentlemen, that will take five to ten years to complete, but it is fundamental, it is a very sound program that we have laid out here. We cannot bring the people from Iowa and Illinois, those hog raising sections and cattle raising sections in here, and put them out in our country; they would not live under the existing conditions. We have no schools excepting in three or four districts; now we have splendid up-to-date schools and community centers, the people in this section are improving their property, and the land has advanced in value from the time I came here in 1900, from $2.50 an acre to $200 in this section.
Q. What do you attribute that to, more than any other one thing in this country?
A. Swift & Company buying this plant, absolutely, gentlemen.
Mr. Taylor: May I have an objection to all of this testimony?
Examiner Sadler: Yes sir.
By Mr. Taylor: Q. Isnt that condition true all over the state of Georgia?
A. No sir, this immediate section is in better condition and the land and property values are more valuable than any other section of the state of Georgia.
1547 Mr. Taylor: No further cross examination.

Examiner Sadler: The witness will be excused.
(Witness excused.)
Examiner Sadler: Recess until 2:00 P. M.

(Whereupon, at 12:45 P. M. July 15, 1921, a recess was taken until 2:00 P. M. of the same day.)

After Recess

2:00 O'clock P. M.

Examiner Sadler: The hearing will come to order.

W. C. VEREEN was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination.

Mr. Taylor: Now, Mr. Examiner, I understand that Mr. Vereen is desirous of getting away as soon as he can, and in consideration of that, also in consideration of the continuity of the record, I will suggest, in fact I will make it a motion that Mr. Vereen be permitted to proceed and testify without interruption or objection and that each side reserve the right to make such objections and motion later as it sees fit.

Examiner Sadler: Any objection?

Mr. Hill: All right, sir, I agree with you in that. I just want to draw Mr. Vereen's attention to what I would like for him to testify to.

Q. Mr. Vereen, did you have the negotiations with Mr. L. F. Swift at the time the old Moultrie Packing Company was sold to him?

A. Yes sir.

1548 Q. Now, I will get you to state in your own way all that was said by Mr. Swift and you with reference to the continuous operation of this plant by him; what, if anything was to be done by the citizens here and Mr. Swift, in reference to the encouragement of the raising of live stock? In this community?

A. Well, I met Mr. L. F. Swift at Jacksonville, Florida, relative to this sale, and talked with him about what he proposed to do with the plant in case we should trade, and he gave me to understand that he was going to operate it. As you know, we built this packing plant not merely for the purpose of making money from its operation, but to benefit

the entire country, and we did not want to sell that plant, even for far more than it was worth, and have it shut down. Mr. Swift and I went very carefully over the sections of the country where we got our hogs from; we had before us maps of Georgia, Florida and Alabama; I pointed out to him on the map the various counties in Georgia, Florida and Alabama that we got our hogs from, and he talked to me at considerable length, trying to find out what I thought about their ability to increase the production of live stock in that section of the country. After I satisfied myself that they were going to increase the capacity of the plant and to operate it on, then we came to the price, and finally we agreed upon that, and I gave him an option upon the stock that I owned myself, and we wrote up—he wrote it out himself,—a little
agreement being me to try to buy up all of the other
1549 stock at the same price that he agreed to give me for
mine. I agreed to do that, and I came home with the assurance from him that he would come to Moultrie during that week and look over the plant. He asked that I try to see what I could do about buying up the other stock before he got here. As soon as I got home I called a meeting of the board of directors of the packing plant, and told them what had been done, and showed them this little agreement which Mr. Swift had drawn up, and which I had signed and he had signed, wherein I agreed to sell my stock. I told them, "Here, you see I have bound myself to endeavor to get all the balance of it. He has got this option on my stock for thirty days." After discussing the matter at considerable length they all agreed to accept the price that I had agreed to accept for mine. They of course asked what Mr. Swift was going to do with the plant, and I told them all that had passed between us at Jacksonville. So I went to work then to secure options from each stockholder. I met with several stockholders who at first refused to give options on their stock, and they gave as a reason that they had put money in the plant in order to increase the value of lands in this section, and that they owned lands, and they were afraid if Swift & Company bought the plant, it might be that they would just shut it down, might just want the goods out of the way and shut the plant down. Well, I told them I had
reached an entirely different conclusion from that in my
1550 conversation with Mr. Swift, but he says he is coming
up here one day this week, I dont know what date, I will take the matter up with him again. So when Mr. Swift

came I mentioned this fact to him, and told him that some of the people were afraid he was going to shut that plant down and just wanted to buy it to get it out of the way, because we were doing business here. He laughed, he says, "My gracious alive," he says, "you know, I intend to make that plant two or three times as big as it is." He says, "I would not have it if you were going to force me to keep the same size; I would not buy it at all." He says, "You go and tell your people to rest assured, that this plant is going to be enlarged, and it is going to be operated right along." We talked considerable about how it would be best to increase the quantity of live stock in this country; he showed great interest in that, and his idea was to increase the production of live stock in all this section or Georgia, Florida and Alabama, which would be tributary to this plant.

Q. Mr. Vernon, did he promise to encourage the live stock in the community if you would sell to him?

A. He did not promise, he said that was what he was going to do.

Q. And since that time that is what he has done?

A. Oh, yes; they have done everything in the world that he promised; I never had any dealings with fairer people in my life; they have lived up to every promise and were

1551 just as reasonable in everything as they could be.

Q. Mr. Vereen, I will get you to state in your own way the effect that that plant, since Swift has had it, has had upon the commercial life of this community?

A. What efect it has had?

Q. Yes sir.

A. Well, the effect has been marvelous, because when we started a plant of our own—you live in this section, and as you know, people all over Georgia were becoming disheartened, the farmers, on account of the advent of the boll weevil. When we put this packing plant here, they became encouraged; they saw there was something else for them, some other line of business for them. They were very much encouraged when Swift & Company came in and bought the plant; it caused a better feeling all around, because the public generally knew that the owners of the old Moultrie Packing Company did not invest their money in it because they wanted jobs, but they invested it because they took it in as a side line, because they wanted to help this section of the country. They knew when Swift & Company took it, that Swift & Company had an unlimited amount of money, and

they could make it as big as they wanted to, could operate it better than we could. Secondly values, property values, as anyone who is familiar with condition here will tell you, advanced immediately, not only farm lands, but town lands.

I know a son of mine had bought a section south of
1552 town here, some old fields and things down here, in fact I sold it myself; I did not own it myself, but the bank did, which I am president of, had taken it in on a debt, about ten thousand. He came to me then, before we had any sale, and he wanted to buy that property. I didnt hardly think we could sell it. He says, "What will you take for it?" I says, "If you will pay us what we got in it, we will be glad to take it. He took it and just after that he sold off one part of it for as much as he gave for it, and cut the balance of it up into lots, and I dont know what he got for that. It is all that southern side of town; that property advanced wonderfully. He told me, "If you just put that sale through with Swift & Company I am coming out all right, with that property down here." Farm land all around here in this country advanced in price, too.

Q. Since Swift & Company has been here, have the farmers of this section been afforded a competitive market for their hogs and cows?

A. Well, up until the past year, of course, there was no one here but Swift & Company to buy the hogs, just as in the days of the old Moultrie Packing Company there was no one here to buy but the Moultrie Packing Company, until the past year, some of us got together and organized a little stock yards company out there, and since then there have been buyers there, competitive buyers.

Q. There has been competitive buying since last fall?

1553 Yes sir.

Mr. Hill: And that is all.

Cross-Examination by Mr. Taylor.

Q. Mr. Vereen—

A. Yes sir.

Q. About the fall of 1917 farm products in this community began to advance, did they not?

A. Yes sir.

Q. Cotton?

A. Yes sir.

Q. Do you recall how much cotton became worth at that time, how the price went?

A. Well right off hand, in the year 1917, I have not got it in mind, no.

Q. Going back say, to the beginning of the advance, can you recall about when that was?

A. Of course I have in mind that in 1914, the year the war began, cotton went down to five, six or seven cents. Well, it continued along about seven up to possibly eight cents, away along during the summer; the next fall, the fall of 1915, I remember there was an advance, continued steadily along through 1916; I don't remember exactly the price in 1917; I was looking at that the other day, but I have forgotten it.

Q. And the prices continued to advance right along, 1554 didn't they, in the fall of '17, '18 and '19?

A. They didnt advance so much; the biggest advances, you know, were in the latter part of 1919 and 1920.

Q. How high did the price get during that time?

A. Well, cotton sold as high as forty-one, two or possibly forty-three cents here.

Q. How about the other farm products?

A. The other farm products were high, too.

Q. And they began to advance along about the same time, didnt they, along in '16 and '17?

A. That is my recollection, about the same time.

Q. Prosperity was general, all through this section of the state?

A. Yes sir.

Q. In fact, all over the state, as far as your knowledge goes?

A. Yes.

Mr. Taylor: That is all.

Mr. Hill: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Taylor: I wish to object to all of the testimony of Mr. Vereen on the ground that much of it is irrelevant and immaterial, that much of it has already been covered by Mr. Vereen's testimony, and furthermore, that much of it is conclusions; I move to strike out the same for the above reasons.

1555 J. W. COLEMAN, called as a witness on behalf of respondent, after first being duly sworn, testified in substance as follows (pp. 3461-3471):

Direct Examination.

That he is a farmer and lives eight miles from Moultrie, Georgia; that he is fifty years old and has lived in this section of the country for twenty-seven years; that he was a farmer practically all his life; that he was a live stock buyer and yard man for the old Moultrie Packing Company and continued in the same capacity after Swift bought the company until October, 1918, and as such buyer was familiar with the prices paid for hogs by the Moultrie Packing Company and by Swift & Company at Moultrie, and was also familiar with the prices paid for the various classes of hogs being marketed on the Moultrie market.

That the Moultrie Packing Company paid from two to three cents per pound and at times, when the embargo was on, from three to five cents a pound under the Chicago market.

Q. How does Swift & Company compare with the Chicago market?

A. Not to exceed three cents per pound, in my judgment.

That since the plant has been run by Swift & Company the witness sold them hogs and was paid within one-fifth of a cent of the Chicago market. That the witness knows of his own personal knowledge that Swift & Company have encour-

aged the growing of better live stock and better feed-
1556 ing of live stock and were continually sending out pa-

pers of various descriptions, urging the farmer to a better knowledge of raising and improving his live stock; that these questions would be discussed at meetings; that he supposed that in the last three years he had attended twenty-five meetings and public gatherings where the live stock situation had been discussed with Swift & Company's representatives; that they had encouraged taking parties to various stock farms to show the importance of improving the live stock; that during the county fair the witness had charge of the live stock shed and that in this shed Swift & Company had large placards showing the different classes of hogs and different classes of cattle, from the scrubs to the best. That these placards explained and gave reasons for changing from the poor grade to the better grade and showed the difference in profits made from the poor grade and the good trade on

both hogs and cattle; that before Swift & Company came there was practically no competition in the buying of live stock; that now, since the stock yards has opened, there is a competitive market opened to everybody and anybody.

The witness produced, identified and authenticated a photograph of the plant of the Moultrie Packing Company showing the condition of the plant at or about the time it was sold to Swift & Company. This photograph was offered and received in evidence and marked "Respondent's Exhibit 9."

1557 The witness produced, identified and authenticated a photograph of the plant of Swift & Company as it was at that time (July, 1921). This photograph was offered and received in evidence and marked "Respondent's Exhibit No. 10."

Quote testimony on pages 3472 to 3486 both inclusive.

1558 *Cross-Examination of Mr. Coleman.*

By Mr. Taylor: Q. Mr. Coleman, when was it you sold your hogs within twenty points of the Chicago market?

A. I could not give you the exact date, it was in May of this year, I cannot give you the exact day of the month.

Q. Was it in the latter part of the month or the fore part of the month?

A. I rather think it was after the middle of the month, I think it was; I got the date, if I could get back to my records.

Q. What kind of hogs were they, corn fed or peanut fed?

A. Corn fed hogs.

Q. Were they well bred hogs?

A. Yes sir.

Q. They were not the razorback type that you spoke of?

A. No sir, no sir, they averaged 223 pounds; 58 head.

Q. It was approaching the season of the year in which the spread is very small between the Chicago market and the Moultrie market, too, wasn't it?

A. Well, it really was smaller than it ever had been before.

Q. Now, go back to the fall of 1918, were you buying at that time? I believe you testified you were buying for Swift & Company at that time?

A. Yes sir.

Q. There was a pretty wide spread, wasn't there?

1559 A. The first of 1918?

Q. No, the fall of 1918. Along in October?

A. It was from one, or rather, two to three cents, not over three cents.

Q. Now, I will ask you to search your mind again, and tell me if it was not from four to five cents?

A. No sir, was not, not in my knowledge.

Q. Were you buying for Swift & Company at that time?

A. Yes sir, I was buying cattle more than hogs, I did not buy very many hogs, I only bought one carload of hogs, I think that season, but at the same time—

Q. Then you were not keeping close track of the hog prices?

A. But at the same time I would come into the yard once a week, and I looked over the markets and the purchases of hogs for the week.

Q. Now, I will ask you to search your recollection carefully and state whether or not there was general dissatisfaction on the part of the farmers in this community because of the wide spread between the price here and the price at Chicago?

A. It was not a general condition that I noted; a few farmers, occasionally one would come in and raise objections, maybe he would have one or two hogs; as I told you, in 1918 I did not stay in the yards every day, just occasionally I was in the yards, once a week, perhaps.

Q. Now, let me ask you a question, if you dont recall
1560 that the dissatisfaction and the feeling became so high that Senator Harris introduced a bill in the spring of 1919 for an investigation on this situation of this wide spread of prices between the hogs of this section of the state and the Chicago prices.

A. I knew that that bill was introduced, but I dont think that it was from propaganda from this immediate territory; if it was I was not cognizant of it; I wondered at the time why it should be from this section; I dont know where it came from; I dont know.

Q. Now, just how much of a spread do you wish the record to show that you swear existed in October of 1918 between the price of the local hogs here and the Chicago hogs?

A. Not exceeding three cents, to my knowledge.

Mr. Taylor: That is all.

Cross-Examination by Mr. Horton.

Q. Mr. Coleman, would that spread of three cents be when they had the embargo on the hogs?

A. Yes, we had an embargo on hogs, I think, a couple of times.

Q. Yes.

A. I don't positively recall that that would exist just at that time, any more than any other time; it perhaps would have been 1916 the old company had it, before Swift bought; they had a greater number of hogs there at that time than I ever saw at any one time before or since; that was the
1561 first year I worked with the company. I believe Swift & Company bought the plant in 1917.

Q. That is right.

A. In the fall and winter of 1916 and the spring of 1917, they had the place covered up in hogs, but this was before Swift & Company bought, and then there was a greater spread then in the market than there was since, I know that.

Q. What was the spread at that time?

A. It was three to five cents a pound; because they were buying just as cheap as they could, in fact, did not want them, could not handle them, didn't know where to put them; during the ownership of the Moultrie Packing Company; there would be a few hog buyers would come around in there trucks and solicit hogs, shipments to different parts of the country at that time, that is, they would come when these runs were on, you know.

Q. Mr. Coleman, were you the head buyer out there?

A. No sir, I was not the head buyer; Mr. Fitzgerald was the head buyer during the time Swift owned it; for the old company I was the head yard man of the old company.

Q. Head yard man?

A. Yes sir.

Q. You had an opportunity—

A. I did not have the price making power, or rather settling as to prices of the hogs at that time; my advice always came from the office, if I was to give more or less.

1562 Q. But you do not know what was paid?

A. How is that?

Q. But you do know what was paid?

A. Yes sir.

Mr. Horton: That is all.

Mr. Taylor: Please go back and read that answer of Mr. Coleman's about trucks going around to buy hogs.

(Answer read.)

By Mr. Horton: Q. Mr. Coleman, do the farmers here slaughter hogs on their farms?

A. Yes sir, practically all of them.

Q. Is that practice quite extensive?

A. Yes sir.

Q. All the farmers do?

A. All the farmers, all of them kill hogs for their own use, and sell them, the cured meats.

Q. They did that before any plant was established here?

A. Yes sir.

Q. Then they did it while the Moultrie Packing Company was here?

A. Yes sir.

Q. Did they do that after Swift & Company came here?

A. Yes sir, do it yet.

Q. It is a considerable factor in competition?

A. Why, sure, I have very often heard it said, "Well, we will kill our hogs and put them in the cold storage or our
1563 smokehouse, when they are not satisfied with what are being offered.

Mr. Horton: That is all.

Recross Examination by Mr. Taylor.

Q. Now, Mr. Coleman, where did these hog buyers who came around with trucks that you referred to a little while ago come from?

A. Why, quite a few local ones, take Camilla, Bainbridge, Thomasville, Quitman, various sections around Tifton, they would run through the country and solicit hogs, and get them together in carload lots; sometimes they would be shipped into Moultrie, sometimes they would be shipped to Nashville or Atlanta, quite a few shipped to White Provision Company.

Q. This was back in 1916 that you were speaking of?

A. 1916 and '17; well, they do it yet.

Mr. Taylor: That is all.

By Mr. Horton: Q. Compared to the volume that was slaughtered over here at the packing plant, were those shipments large or small?

Mr. Taylor: I object to that, unless the witness has figures here; if he has, we will be glad to have them.

Q. Mr. Coleman, isn't it true that the shipments made at this time to the outside, as compared with the volume that went to the packing plant, were very small?

A. That is true.

1564 Mr. Taylor: I object to that unless the witness has figures.

A. I have not the figures to show the numbers, but whatever it was, a greater per cent came into the yards here than there was shipped out; I know that was a fact.

By Mr. Taylor: Q. That was in 1916 you refer to?

A. In 1916, 1917, and 1918, more hogs come into the yard now, than go out, but then at the same time there is some going out in different directions.

Mr. Horton: That is all.

By Mr. Taylor: Q. Now, at the present time, these same buyers that used to travel around the country in 1916, '17 and '18, go over here to the stock yards at Moultrie and do their buying, do they not?

A. Now, you mean?

Q. Yes.

A. These hogs rustlers, we used to call them, come into the yard to buy them?

Q. Yes, the ones that you say used to come around and buy, that you testified about?

A. Not in their trucks, people from out of town, not in the country altogether, come in and buy out of the yards, to ship out.

Q. Can you state who—give us the names of any of the people who come in here to the yards to buy?

A. No, I would not attempt to name any separate party.

1565 Q. Can you name any of the people who go through the country in trucks buying hogs?

A. Well, I could have at one time; not being closely—that is, not going to the yards very often now, I could not name you people right off hand, I know there are people that I know, fellow by the name of Kidd, Bowron—

Q. How long has Kidd been doing that?

A. He has been doing it ever since I went to the old company first.

Q. That was just when?

A. 1916, I think, I understand your question to be to go through the country with their trucks?

Q. Yes. Do you recall anybody else?

A. Well, Vic Hartsfield.
Q. How long has been buying hogs through the country?
A. Since 1917; I don't think he did it in 1916, know he didn't.
Q. What time in 1917 did he start?
A. Along in the summer, picking up the tail ends of the season.
Q. Do you recall anybody else?
A. Mr. Allen; he left here; he is not in the hog business now.
Q. How long has he been doing that?
A. He did that for one season.
Q. When was that?
A. 1917. Mr. Self.
Q. That is through the entire year of 1917?
1566 A. Not Mr. Self. Dolf, 1917, Mr. Dolf.
Q. When did Mr. Dolf buy?
A. 1917.
Q. The entire year?
A. During all the hog season, yes sir, 1917.
Q. All of the season beginning with the fall of 1917 and going through?
A. The winter of '16 and the spring of '17, '17 on.
Q. Now, Mr. Allen, did he cover that same period?
A. Yes sir, Mr. Allen.
Q. From the fall of 1916 to the spring of '17?
A. Spring of '17 to the fall of '17, not '16, I had quite a few people, you know, I could not know them all; that is not all of them; so far as I know they are doing it yet.
Q. How about Mr. Gibbs, Tifton?
A. Mr. Gibbs?
Q. Yes?
A. Mr. Gibbs never did get down in this territory.
Q. And just what section did he cover?
A. Around Tifton.
Q. How long has he been doing that?
A. He did it in 1916, 1917 and a little in 1918, I think.
Q. Now, do you know Mr. Edwards at Enterprise?
A. Edwards, Enterprise, Alabama?
Q. Yes.
1567 A. Yes sir, Mr. Edwards shipped thousands of them in here in '16 and '17, and some in '18.
Q. Has he shipped any since?

A. I could not say; I could not tell whether he did ship any in to Swift's after I left there or not.

Q. How about Mr. Wade of Quitman?

A. Mr. Wade shipped lots of hogs here.

Q. How long had he done that?

A. 1916, '17, and some in '18.

Q. Do you know just where he bought them?

A. Bought them in the vicinity of Quitman, around Brooks county. Perhaps he went as far as Valdosta; the Valdosta Live Stock Company shipped them in here.

Q. Do you know Mr. Metcalf?

A. Mr. Metcalf of Camilla?

Q. Yes?

A. Yes sir.

Q. Has he been buying hogs for some time?

A. Yes sir.

Q. How long a time?

A. From the time I went with the old company until now, so far as I know.

Q. Where did he buy them?

A. He bought them in his territory around Mitchell county, Baker County, perhaps he had gone into Decatur County.

1568 Q. Did he ship here to Moultrie then?

A. Yes sir.

Q. Dos he ship here now, do you know?

A. I don't know; Mr. Perkins of Bainbridge shipped thousands of them in here.

Q. When did he start shipping?

A. He was shipping when I went with the company, up to the time I left the company.

Q. Where did he buy?

A. He bought in the vicinity of Bainbridge, Donaldsonville, that is in Miller county.

Q. How far is that from Moultrie?

A. That is some 65 miles.

Q. How far distant are these various territories that you mentioned from Moultrie in which hogs were bought?

A. From 20 to 65 or 75 miles; 75 miles to Donaldsonville.

Q. All of them are within a radius of a hundred miles.

A. All of them are within a radius of a hundred miles of Moultrie.

Mr. Taylor: That is all.

A. Now, these people, the last people I mentioned, are

not what I would call hog rustlers right around a packing house. Mr. Allen, Mr. Kidd and Mr. Vick were the local hog rustlers here; the other people were at the other points.

Q. They were larger hog buyers?

1569 A. They were the larger hog buyers, in other words, they shipped—they would be men that would buy them, if they sent them to them they would send them in here; in other words, they are hog speculators, all over this country every year.

By Mr. Horton: Q. Now, Mr. Coleman, I think the record shows an erroneous impression.

A. How is that?

Q. I think that the record now gives an erroneous impression of this situation.

Mr. Taylor: Mr. Examiner, I must object to this sort of statement to the witness; I think the record shows exactly what the witness has said.

Q. Mr. Coleman, I state again that I think the record shows an erroneous impression of this situation.

A. Yes sir.

Q. I want to clear it up.

A. Yes sir.

Q. You want to, too, if it does, don't you?

A. Certainly I do.

Q. Don't want any erroneous impression in there?

A. No sir.

Q. Now, when you spoke of a hog rustler—I think that that is a very descriptive name,—I understand that is a man who goes out in the country and gathers hogs with a

1570 truck and brings them in to the packing house?

Mr. Taylor: I object to counsel here telling his witness what he wants.

Examiner Sadler: I will ask counsel not to lead the witness.

Mr. Taylor: And coaching his witness what to say.

Q. What does he do, then, Mr. Coleman?

A. If he is in fifteen or twenty miles of the packing company, he brings them in on his truck; if the haul is too far, he will get to the first man that will buy them of him, so as to save as much shrinkage as he can. He will take them to Thomasville, or take them to Quitman, or take them to Bainbridge, or take them to Camilla, take them to the various points, and deliver them there.

Q. Yes.

A. Then in turn, those people, sometimes they will perhaps ship some to Nashville, send them to the White Provision Company, or they will send them to Moultrie.

Q. What per cent of all those hogs in all this section around Moultrie here came into the Moultrie plant?

Mr. Taylor: I shall be very glad to have the witness give any figures that he has on the subject, but I object to conclusions.

A. I have no specific figures.

Q. What is your best judgment on it, Mr. Coleman?

A. My best judgment seventy-five per cent of the 1571 hogs came to Moultrie.

Q. Came right into Moultrie?

A. Yes sir.

By Mr. Taylor: Q. When was this?

Mr. Horton: Q. To the Moultrie plant?

A. When was it? From the time the old Moultrie Packing Company and Swift & Company—from 1916 to 1918; I believe that they got more than seventy-five per cent of them during 1916 and 1917.

By Mr. Taylor: Q. Is that during the—is that in the immediate vicinity around Moultrie, or do you mean to say that is clear to the extent of the hundred mile radius?

A. Within a hundred mile radius.

Q. Now, where did the other twenty-five per cent go?

A. Well, various points.

Q. Where, for instance?

A. Well, Atlanta, some to Tifton, some to Jacksonville, some went to Wilmington, North Carolina; some to Statesboro, but there was not so many.

Q. Do you know the situation which exists in the same territory at the present time?

A. Well, I think that they get more of them out of town in their trucks now than they get here.

1572 Q. In other words, you are not familiar with the situation today?

A. I don't know, I could not say, not staying around the yards much, I could not tell how they run here, but my honest opinion here is that they don't get as many hogs proportionately now as they did before.

By Mr. Horton: Q. Why, Mr. Coleman?

A. Because there are too many people after the hogs, the way I see it; I have had inducements to sell my hogs right now, right in the last few days, to ship them away from Moul-

trie; I have not any ready; of course, if the price is better than Swift & Company will pay I will sell them to them.

Q. What about the number of hogs in the country today, packer hogs?

Mr. Taylor: I object to that, if the witness has no figures on it.

A. Not so many here.

Q. The hog population has been smaller in 1920?

A. The hog population has been smaller in 1920, yes sir, 1920 up to now, I know that is a fact.

Mr. Horton: Yes sir. Thank you very much.

Mr. Taylor: That is all.

Examiner Sadler: Any more examination of this witness?

Mr. Horton: No.

Examiner Sadler: The witness will be excused.

1573 (Witness excused.)

MR. G. W. NEWTON was thereupon called as a witness on behalf of respondent, and after being first duly sworn, testified in substance as follows (pp. 3487-3489):

That he lived six miles from Moultrie and was a farmer; that he is fifty-five years old and was born and raised within five miles of where he now lives; that he raised hogs and sells them to Swift & Company; that he sold to Swift & Company some two or three different times that year; that for his hard hogs they paid one cent per pound premium; that the price paid was within half a cent of the Chicago market; that he is a small stockholder in the stock yards company; that he attended one meeting and they were discussing and planning to organize the stock yards company; that Mr. McDowell, manager of Swift & Company, made a talk and stated that his company could not own any stock in that stock yards but that they felt competition would help bring more hogs and more cattle to Moultrie and would help the market in every way; that it would help this community and this section around here.

1574 (Witness excused)

H. S. DAVIS was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. Do you live in Moultrie, Mr. Davis?
A. Yes sir.
Q. What is your occupation?
A. Work for Swift & Company.
1575 Q. Were you in charge of their car route department?
A. No sir, I was assistant car route sales manager.
Q. How long were you connected with the car route?
A. Well, as salesman and as assistant sales manager, about three years.
Q. That is, from what period to what period?
A. 1918, the first of 1918 to the present.
Q. Are you familiar with the territory covered by the Moultrie plant in Georgia and Florida?
A. Familiar with the part covered by the carlines.
Q. Yes sir.
A. Car route department.
Q. Yes. Well, I hand you here a map of the state of Georgia and another one of the state of Florida. I will ask you if you can take a red pencil and indicate the territory in which the Moultrie plant operated those car routes?
A. Yes sir.
Q. You have done so?
A. Yes sir.
Q. You have done so by drawing a red circle; do you mean to say that the car routes operated within all of that territory?
A. Inside of this circle, yes sir.
Q. And the same on both the Georgia map and the Florida map?
A. Yes sir, both of them.
Q. Now, how many towns did you sell Moultrie products in?
1576 Mr. Taylor: I would like to make an objection to all of this as irrelevant and immaterial, Mr. Examiner.
Examiner Sadler: The objection will be noted. I will let all this go in under the objections, and let the Commission decide whether it would be relevant to the issues.

Q. How many towns?

A. 331, the last period we operated.

Q. Now, was that all the towns in this section of the country in which the Moultrie product was sold?

A. No sir.

Q. Calling your attention to the map of Georgia, where has Swift & Company got branch houses?

A. They have got branch houses in Savannah, Georgia, Augusta, Georgia, Macon, Georgia, Atlanta, Georgia, Columbus, Georgia. That is during the car routes; at the time—they have one at Waycross now, but it was not in operation when the carline were in operation.

Q. Now, did the Savannah house sell in this section of the country?

A. Yes sir, they sold from Savannah out to the carline territory.

Q. Out to the carline territory?

A. And the Augusta branch territory and the carline territory met up in this territory.

Q. That is from the northeast?

A. The is from the northeast. The Macon branch
1577 house met the car route territory on the north; Columbus branch house met it on the northwest.

Q. Yes sir. Now, what about the section west, is that also covered, too?

A. Yes sir, covered by the Andalusia carlines.

Q. Yes sir. Now, take the Florida map, what territory did the branch house at Jacksonville cover?

A. They covered—met the carline department on the territory to the southeast; Pensacola branch house on the southwest at some points; they also have a branch house at Tampa, Florida, which met the carlines territory on the south.

Q. Are you still operating those car routes?

A. No sir.

Q. When did you discontinue them?

A. May 2nd.

Q. What did you do with the territory you covered?

A. Turned most of it back to the branch houses.

Q. Is it all being worked?

A. All of it is being worked, yes sir.

Q. That is, it is being worked?

A. I have one territory out of Moultrie, working Moultrie and nearby towns, the branch houses are working all the rest of the territory that we formerly worked.

Q. Now, are Moultrie products sold in other places besides those in this southern section?

1578 A. Not as I know of, no sir.

Q. How about the cities in South Carolina?

A. Well, I thought you meant just the southeastern cities, that is what I thought you meant when you asked the other question. They are sold in South Carolina, Georgia, Florida, I dont know whether they have other branches in other states or not.

Mr. Horton: All right, we will offer these maps in evidence.

Examiner Sadler: Any objection?

Mr. Taylor: No objection other than the general objection which I have made to all of this testimony.

Examiner Sadler: The maps will be received in evidence, and marked Respondent's Exhibits 11 and 12 respectively.

(The maps were received in evidence and marked "Respondent's Exhibits 11 and 12" respectively.)

Q. Now, how often did you work this car route territory?

A. Every week.

Q. What was the method of working it?

A. Had salesmen call on the trade; each salesman had a territory to cover, and he covered it every week.

Q. Were there any towns you skipped, and if so, what was the nature of them?

A. There wasnt any that we skipped; we worked them all; I might make an exception, there might have been a town so far off the railroad that we could not get over to that, but if it was on the railroad and we could get deliveries to them, we worked it.

1579 Q. Then you shipped the goods out to the customers in the cars?

A. Yes sir.

Q. What was your reason for discontinuing the car routes?

A. Well, the reason we discontinued the carlines was—my idea of it is that there was so much products shipped into Moultrie and then had to be shiped out, that we had two freight rates on it, and we were put to the disadvantage of the freight in and the freight out. In other words, we were bringing in eight or ten million pounds a year, to be reshipped on the carlines, we was paying freight from Chicago into Moultrie; whereas if we had had enough Moultrie products we would have saved this entire freight charge.

Mr. Horton: Cross examine.

Cross-Examination by Mr. Haycraft.

Q. Do you know whether or not Swift & Company discontinued operating other car routes this year as well as this system of car routes here?

A. Yes sir, they discontinued operating route cars at Andalusa.

Q. Anywhere else that you know of?

A. Not that I know of.

Q. What time of the year do you principally receive this meat from outside, from other sources than the Moultrie Packing Company?

A. I would say from about this time of the year until December.

1580 Q. From July until December?

A. Yes sir.

Q. Do you get fresh pork cuts in from outside during the summer?

A. Yes sir, get frozen.

Q. Frozen?

A. Yes sir.

Q. From the plants at St. Louis, Chicago, and other places?

A. I dont have anything to do with ordering it in; I guess it comes from Chicago.

Mr. Haycraft: That is all.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

1581 (Witness excused)

S. G. LONG was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. What is your business, Mr. Long?

A. Grocery.

Q. Who are you with?

A. Gamage Grocery Company.

Q. Do they handle meats?

A. Yes sir.

Q. Who buys the meats?

A. I do.

Q. How long have you been buying the meats?

A. Ever since I have been with them, four years.

1582 Q. Who do you buy from?

A. Swift, Armour, Morris, I have bought some considerable meat from Wilson, but he has not got a man that makes this territory now.

Q. Comes in here from time to time?

A. Yes sir.

Q. Any others?

A. Yes sir, Mr. Luchsinger; he used to be here at—I think it was Macon Packing Company; he used to make this territory; I bought meat from him.

Q. Has he sold you since or quoted you since he has been representing the St. Louis Independent Packing Company?

A. Yes sir, he quotes, but he has not got a man down here, I have not bought anything from him.

Q. You have not had an opportunity to buy from him?

A. Only from quotations.

Q. What can you say about competitive conditions now, and what they were in July 1917?

A. 1917?

Q. Yes, how is it now as compared with July, 1917?

Mr. Taylor: That is objected to, Mr. Examiner, as calling for a conclusion of the witness.

A. I think competition is stronger now than it has been.

Examiner Sadler: I think that is a question for the court and the Commission to decide.

1583 Mr. Horton: How is that?

Examiner Sadler: I say I think that is a question for the court and commission to decide on, whether competition was stronger now than before.

Mr. Horton: How are they going to know it unless they have this? The court and Commission dont know who comes into this territory.

Mr. Taylor: I am not objecting to any facts, I am objecting to conclusions only.

Q. How do you know that, now, Mr. Long, how do you know competition is keener now than it was before?

A. Well, there seems to be more competition in prices; I get a price from one fellow and put it up to another one, and he will try to beat it.

Q. Do you—do they drum you harder now than they did before?

A. Yes sir.

Q. Mr. Long, do the farmers slaughter and cure meat and dress it and bring it in here?
A. Yes sir.
Q. Do you buy some of that meat?
A. Yes sir.
Q. How long has that been going on?
A. Ever since I have been in this city, sir, nine years, I dont know how much longer.
Q. How was it last year as compared with the previous years?
1584 A. I think there was more of it than there ever had been.
Mr. Horton: That is all.

Cross-Examination by Mr. Taylor.

Q. When was it you stated you came here, Mr. Long?
A. I came here nearly nine years ago, last April.
Q. Have you been buying meat all that time?
A. Yes sir.
Q. Now, going back to the summer of 1917, Swift & Company was here at that time doing business, wasnt it?
A. I dont remember.
Q. Selling meats?
A. I don't know when they bought that plant.
Q. I dont refer to the buying of that plant, I mean they were in this market and selling their meats and selling Swift & Company's good?
A. Yes sir, before this plant was here they had men out of Albany that made this territory.
Q. Armour & Company also?
A. Yes sir.
Q. Morris & Company?
A. Yes sir.
Q. The predecessors of Wilson & Company, that is, Sulzberger & Sons, were selling meats here?
A. Yes sir.
1585 Q. I believe you said Wilson was not represented here now?
A. No sir, I have not seen one of his men in, I dont think in two years.
Q. And the White Provision Company, was there here then?

A. The White Provision Company? I dont know his—if he did, he didnt call on me.

Q. And the Moultrie Packing Company?

A. Yes sir.

Q. Now, you say that the farmers around here had more meat to sell last year than every before, do you know why that was?

A. No sir.

Q. Why it was?

A. No sir, I dont.

Q. Is the price of meats cheaper now than it was a few years ago?

A. Yes sir.

Q. The price of hogs, also, arent they?

A. What is that?

Q. The price of hogs is also cheaper than they were a few years ago?

A. Yes sir.

Q. Now, have you talked with any of the farmers who offered this farmers' meat?

A. Yes sir, I have seen them every day.

Q. Did they not tell you that they were offereing it 1586 in the shape of meat because they could get more for it that way than they could by selling it as hogs?

A. Cured meat?

Q. Yes sir.

A. No sir, I have never had one to tell me that.

Q. Just what form do they offer this meat in?

A. They bring it in in hams, and things like that; but it is not trimmed like packing house ham.

Q. You mean smoked ham or fresh ham?

A. Yes sir, I handle them smoked, dont handle fresh meats.

Q. Does the farmer bring in anything else aside from smoked hams?

A. Yes sir, shoulders and sides.

Q. All smoked?

A. Yes sir.

Q. Now, do you know if there is any cold storage plant around here where the farmers keep meats of any kind?

A. Yes sir.

Q. Where?

A. Moultrie Ice & Cold Storage Company.

Q. How about the surrounding towns?

A. I could—you mean cold storage in surrounding towns?
Q. Yes?
A. I could not say sir, I don't know.
Q. How long has this Moultrie Cold Storage been here?

1587 A. It has been here—I think they built that cold storage about three or four years ago, I dont remember sir, exactly, I could not say just when they building it over here.

Q. Have the farmers been bringing in their meat every since and storing it with this cold storage?
A. I think so, yes sir.
Q. Do they cure meat here at this cold storage plant?
A. Cure it, yes sir.
Q. Cure it for the farmers?
A. Take it right green, yes sir.
Q. The farmers bring it in fresh, and the cold storage people cure it for them and keep it?
A. Yes sir.
Q. How is that meat disposed of?
A. Why, they keep it a certain length of time, sir, they then notify the farmer, and he goes and gets it and brings it and sells it or takes it back home and uses it for his own consumption.
Q. Now, wasnt this cold storage plant built along about 1918?
A. I would not say, sir; I dont know; I know it has been built about three or four years; 1918—this is 1921—I had meat in that cold storage house myself three years ago this last winter.
Mr. Taylor: That is all.
Mr. Horton: That is all.
Examiner Sadler: The witness will be excused.
(Witness excused)

1588 MR. L. A. DICKERSON was thereupon called as a witness and after having been duly sworn, testified in substance as follows (pp. 3549-3555):

That he lived in Moultrie and was Secretary of the Moultrie Cotton Mills; that he was connected with that company since December 15, 1919 and had charge of the records pertaining to the purchase of cotton.

Witness produced, identified and authenticated books which showed purchases of cotton made by the Moultrie Cotton Mills for the years 1914, 1915, 1916, 1917, 1918, 1919 and 1920. The books were offered and received in evidence and permission was given to withdraw the books and substitute an exhibit showing the price of cotton for the years mentioned, which said exhibit was marked "Respondent's Exhibit No. 19."

1589 (Witness excused)

H. S. DAVIS was thereupon recalled as a witness and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. What are your initials again, Mr. Davis?
A. H. S.
Q. You are the same H. S. Davis that testified in this case before?
A. Yes sir.
Q. I believe you testified you were assistant manager of the car route department?
A. Yes sir, while they were in operation.
Q. What period did that cover?
A. Covered from 1918, to 1921, while I was in it.
Q. 1918 to 1921?
1590 A. Yes sir.
Q. Have you been employed in connection with the sale of pork products of Swift & Company during that time?
A. Yes sir, part of the time as salesman, the rest of the time as assistant sales manager.
Q. Now, since May 2nd, 1921, what have you been doing?
A. I been a salesman.
Q. For whom?
A. Swift & Company.
Q. Moultrie plant?
A. Moultrie plant.
Q. Working what territory?
A. Moultrie and adjacent territory.
Q. Now, directing your attention to the price for western meats, particularly western pork, what price have you sold pork from the Moultrie plant as compared with the price on western meat?

Mr. Taylor: Mr. Examiner, that is objected to as immaterial and irrelevant to the issues.

Examiner Sadler: The objection will be noted.

A. Sold it at from one and a half to as much as six cents less than the western product.

Q. That is comparing like with like, product with product?

A. Yes sir, comparing, for instance, second grade Moultrie products with second-grade western product, first grade Moultrie product with first grade western products.

1591 Q. Same weights and averages?

A. Same weights and averages, yes sir.

Mr. Horton: You may cross examine.

Cross-Examination by Mr. Haycraft.

Q. Mr. Davis, do you have any bills or invoices to verify that statement as to the differences in price which you have just stated?

A. Well, you could get the invoices from the records in the office, yes sir.

Q. Did you go over any of them before you came in here just now? Did you go back over the records and check up to see the difference that you received in price?

A. No sir.

Q. You are not testifying, then, from any record, you are testifying from memory of what you have done?

A. Testifying because I sell it every day, know how much I sell it under.

Q. What products do you have in mind, what products do you sell of the Moultrie products and the western products that you can make a comparison on?

A. At the present time I am selling Moultrie bellies, dry salt rib bellies, a Moultrie product, a cent and a half under the same average western rib bellies.

Q. All right, what else?

1592 A. Three weeks ago I was selling Moultrie rib bellies three and a half cents under western rib bellies.

Q. You were quoting them at—

A. Sold them at that much less than I would have sold western bellies.

Q. What else, what other products?

A. I sell Moultrie lard a cent and a half under the same grade of western lard.

Q. That is now, is it, or three weeks ago?
A. That is now.
Q. All right, now, what other products?
A. Sell Moultrie bacon at present two cents under the same grade of western bacon.
Q. What other product?
A. Well, ham at the present time, one cent under the same grade of western ham.
Q. All right, now, how about fresh cuts?
A. Pork loins, sell them one and one-half cents, one and a half cents under western pork loins.
Q. How about hams, fresh hams?
A. Fresh hams?
Q. Yes.
A. One cent.
Q. Do you handle fresh hams from the west?
A. Very few, the only thing, we get a price list and
1593 quote the price on western hams; we have a sufficient stock of hams to take care of our orders.
Q. How about fresh shoulders?
A. Fresh shoulders? I sell such a few shoulders I would have to consult my sheet to know how much I did sell those under.
Q. Do you sell any shipper pigs, what you call whole pigs here, on the Moultrie market?
A. Yes sir, we sell those.
Q. Do you ship anything of that kind in from the west?
A. Havent recently, no sir.
Q. So that the pigs, you only have the Moultrie product to offer?
A. That is all.
Q. Do you have a price list which has all of these various products listed on it?
A. Pigs?
Q. No, all the products?
A. We get western price list on pigs.
Q. Could you get hold of one of those now, to put in as an exhibit?
A. Price of pigs here?
Q. No, the prices on all these products you have been tes tifying about here, showing the western price in comparison with your Moultrie prices?
A. I dont know whether I can get one or not, I can see.
Q. I wish you would; we will wait for you; bring one here

of today and one for three weeks ago that you testified about?

1594 A. All right.

Q. What is this paper I now show you?

A. Is a differential letter, Moultrie weekly differential letter.

Q. No. 25?

A. No. 25, yes sir.

Q. Where does that come from, where did you get it?

A. The sales manager, Mr. Hovey, gives it to me.

Q. Do you know where it come from, where he get it?

A. Yes, I think I know; I think it comes from Chicago.

Q. From Chicago?

A. Yes sir.

Q. What is this paper I now hand you?

A. Moultrie weekly differential letter No. 28.

Q. Same source?

A. Yes sir.

Q. What dates do these letters bear?

A. June 20th.

Q. No. 25?

A. No. 25, yes sir. No. 28, July 11th.

Q. I notice in the first paragraph of these two weekly letters, "basis S. & W. printed list, f. o. b. Kansas City; I will ask you what this paper is now that I hand you?

A. That is the Southern and Western branch house price list.

Q. Issued by Swift & Company?

A. Issued by Swift & Company.

1595 Q. On what date?

A. June 20th.

Q. What serial number does that bear?

A. 269.

Q. Is that the price list, S. & W. price list referred to by the weekly differential letter No. 25, dated June 20th, as a basis?

A. Yes sir.

Q. Now, do you follow these differentials?

A. This one here?

Q. Furnished you in this weekly differential letter in making your quotations to the trade?

A. Not altogether; lots of times I have a verbal conversation with Mr. Hovey, and he gives me more than there is on this weekly differential letter.

Q. Would you say that it was often or seldom that you vary from the differential letter?

A. It is often; for instance, if I go up town, if I have a two cent concession of dry salt meat, and some competitor is underselling me, I come and report it to Mr. Hovey, and he gives me an additional concession on top of this two cents, to meet competition.

Q. Is that true of fresh cuts as well as dry salt cuts?

A. It is true with all of these on different occasions.

Q. Do you find more occasion for making such cuts on your dry sale meats than you do you fresh meats?

1596 A. At this season of the year dry salt meat moves in larger volumes than most anything else, everybody is after the business, I think I have more occasion to use it on dry salt meat than anything else right now, at this particular season of the year.

Q. What about other seasons, say fall and winter?

A. Moves very slowly, dry salt does. Probably have occasion to get an additional concession on hams more than anything else then, sell lots of ham and smoked meats.

Q. Without taking into consideration, however, the local conditions which you have referred to, the differential contained in this letter is the differential which the Chicago office of Swift & Company expects you to get, is it not, on the products listed?

A. I dont know what Chicago expects us to get; this differential letter comes from them, but we vary from it quite often.

Q. This paper I now hand you, a similar price list, S. & W. price list, dated July 11, 1921?

A. Yes sir.

Mr. Haycraft: Mr. Examiner, I ask that these price lists be marked as exhibits in this case, letters No. 25 and 28, and the two price lists which go along with them.

Examiner Sadler: You offer them in evidence?

Mr. Haycraft: Yes.

Examiner Sadler: You are offering them as Commission's exhibits, are you?

1597 Mr. Haycraft: Yes.

Mr. Horton: What is the purpose of the offer, Mr. Haycraft?

Mr. Haycraft: What is that?

Mr. Horton: What is the purpose of the offer?

Mr. Haycraft: They are offered to show the spread between the western and southern products, normal spread.

Examiner Sadler: Any objection? The exhibits will be marked Commissions Exhibits 195, 196, 197, and 198.

(The statements were received in evidence, and marked "Commission's Exhibits, 195, 196, 197, and 198," respectively.)

Q. In your direct examination you made a statement that your differential on this southern product, on these Moultrie products, ran from a cent and a half to six cents a pound, I believe?

A. Yes sir.

Q. As a matter of fact, there are some products that you sell on a cent differential, arent there?

A. I dont know that, absolutely; I gave you one just now.

Q. You gave me two just now in your oral testimony.

A. From memory, yes sir.

Q. Smoked ham and fresh ham?

A. Yes sir.

Q. What product did you have in mind with a six cent differential?

A. That is not right at the present time. I am talking about what spread we have had.

1598 Q. What product was it that you had reference to? Seminole bacon.

Q. Seminole bacon?

A. Yes sir.

Q. As a matter of fact, on bacon there is always a wide differential on the bacon, isn't there, Mr. Davxis, between the Moultrie product and the western product?

A. No sir, I don't think so.

Q. Right now there is a wider spread, isn't there?

A. There is three cents on some of that bacon now; it is two on the others.

Q. Don't you have more of a differential as a rule on the bacon than you do on the other products?

A. No sir, sometimes it is—this differential will be only one cent on bacon; it is all according—most according, I think, to the stock they have got in the plant, how bad they want to move it; if the stock is big, got to move it, it will take a bigger concession, and we have to put it on, because it has got to be moved.

Q. How about the demand, isn't bacon the only that has the lowest demand of all of your products?

A. No sir, there is a big demand for bacon.

Q. There is a big demand for bacon?

A. Yes sir, lots of times we run short, and the concession is almost cancelled.

1599 Q. Is that so?

A. Then we have a lot of it, and have to get a big concession on it; that concession got as high as six cents during the operation of the carline, that is, the Empire, western bacon.

Q. That is the basis you use, isn't it?

A. That is the basis, is Empire, second-grade western bacon, Seminole is the second grade Moultrie bacon.

Q. Would you say, then, at the time when the differential ran as high as six cents on this bacon, or any other products, it was when Swift & Company was long on those products, and wanted to move them?

A. When they were long on those products, and when competitors were evidently long on them, too, we had to cut the price to sell it.

Q. What time do you have in mind that that six cent differential existed on that bacon?

A. I don't know exictly, but it has been right around a year ago.

Q. Was it within the last year, have you observed that you had to have a six cent differential?

A. I think it was just about this time last year.

Q. You think it was just about this time last year?

A. Yes sir.

Q. Since that time what would be the widest differential that you had on any product, in your best memory?

A. Four to five cents.

1600 Q. Four to five cents?

A. Yes sir, that is the best I remember, there is so many records I don't know exactly, that is the best of my memory.

Q. Would you say that that was a rather unusual condition, that wide a differential?

A. Six cents?

Q. Yes, five and six cents?

A. Well, we don't have that much of a concession as much as we don't have it, that is, as a rule it is a little under that.

Q. Now, take dry salt bellies, you have a cent and a half differential now, is that the average run, or do you know?

A. No sir, that is not the average.

Q. What would you say would be the average?

A. I would say two and a half to three would be the average; we cannot get the average, that is just my opinion of it.

Q. That is what you offered in the beginning, was your opinion?

A. Yes sir.

Q. I am just trying to check it up.

A. I tell you what that is not the average concession on dry salt meat.

Q. Yes?

A. This winter, two months ago, we had more dry salt meat than we have now; competitors had more, too, everybody looked like they were after dry salt business; to sell any at all we had to have a bigger concession.

1601 Q. By the way, who is your strongest competitor on that kind of product?

A. Dry salt meats?

Q. Yes.

A. Well, in Moultrie Armour & Company is our biggest competitor.

Q. I suppose that is from the Jacksonville plant?

A. Jacksonville, also on his western products.

Q. Now, take your lard, a cent and a half under?

A. Yes sir.

Q. Is that about the average or is that below the average?

A. That is about the average on lard.

Q. Take your bacon, three cents, how does that run?

A. That is a little under the average on bacon.

Q. You think the bacon differential is a little wider than that?

A. Yes sir.

Q. Take the smoked hams, smoked hams about a cent?

A. It will average more than a cent; it will average more than a cent most of the time.

Q. Think it will average more than that?

A. Yes sir, I think you will find two cents on some of these differential letters.

Q. How about fresh meats, a cent and a half?

A. That is about the average.
Q. Fresh hams a cent?
A. I think we have more than a cent most of the time.

1602 MR. C. O. HUFF was thereupon called as a witness and after having been first duly sworn, testified in substance as follows (pp. 3572-3580):

That he lived in Moultrie, Georgia and was Chief Clerk of the Accounting Department of the Georgia Northern Railroad.

Witness produced, identified and authenticated books and records which showed the volume of packing house products and live stock received and forwarded from Moultrie, Georgia by his railroad for 1914, 1915, 1916, 1917, 1918, 1919 and 1920. The books and records were offered and received in evidence and permission given to withdraw them and substitute an exhibit which said Exhibit was marked "Respondent's Exhibit No. 21."

1603 Docket 453.

Moultrie, Georgia, July 19, 1921.

Met pursuant to adjournment, 10:00 o'clock A. M.

Before:

Clarence T. Sadler; Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

H. McDOWELL was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

Direct Examination (Continued) by Mr. Horton.

Q. Mr. McDowell, when you were testifying the other day about the number of pounds—the number of towns in which the Moultrie product was sold, there were four branches in South Carolina of which you did not have the figures. What branches are those and how many towns do they serve?

A. Those twons were Charleston, Columbia, Greenville, Spartanburg, South Carolina. The number of towns they serve is, Charleston, 100; Spartanburg, 100, Greenville, 100, Columbia, 70.

Mr. Horton: The witness is with you.

Mr. Haycraft: Is that all.

Mr. Horton: Yes.

Cross-Examination by Mr. Haycraft.

Q. A good many questions have been asked in this
1604 record by counsel for the respondent in regard to soft and oily hogs, soft and oily products. I will ask you, Mr. McDowell, whether or not those two words are synonimous, or whether they are different. What do you understand the meaning of soft and oily products to be?

A. For all practical purposes those words should be considered as synonomous.

Q. Well, now, as a matter of fact, isn't there a difference between a soft hog and a soft product, and an oily hog and an oily product?

A. There is a difference in appearance, yes, sir; and we are trying very hard to separate the two in our practical operations.

Q. Will you explain that?

A. We are trying to pick out from our meats those meats that contain a small percentage of oil, which is not very apparent, to the eye, and make an intermediate grade grade out of that meat, with the object of trying to obtain more money for it.

Q. You made an estimate here that ninety per cent of the product sold by—manufactured by this plant was soft and oily; now of that ninety per cent, how would you say that you are able to divide them, the soft from the oily, the intermediate grade that you speak of?

A. I haven't any actual data, Mr. Haycraft, that I can give you on that, but I will explain it in this way, that that percentage varies according to our ability to sell this so-called Dixie brand. Now, we have not had very much success
1605 so far on that, but we are constantly trying to get more of a demand for that intermediate grade, and I think ultimately we will create more demand for it. If you want my guess on it, I would say that ten per cent of the soft and oily part of our meat has been sold as Dixie; it varies so

much that I really don't know whether it is ten or twelve or fifteen or eight, but it is getting along so we have made a little progress on it.

Q. You do have then, three brands that you market, products from this plant?

A. Yes sir.

Q. What are those three brands?

A. The top brand, best quality meat, is the Premium, the same as the other plants; the intermediate grade is the Dixie, and the lowest grade is the Seminole.

Q. What two regular brands of Swift & Company do the Dixie and the Seminole brands—what grades do you put them on a par with, if on a par?

A. For trade purposes, we base both of those brands, for the purpose of determining pride only; we base those brands on the Empire brand of Swift & Company, but neither one of these brands are exactly the same as Empire, because of the difference in the character of the meat.

Q. The Empire brand is second or third grade?

A. It is the so-called second grade.

Q. Second grade?

1606 A. Yes sir.

Q. The Empire I suppose, is manufactured from western hard products?

A. Yes sir, that must be from hard meat, yes sir.

Q. Did I understand you correctly, Mr. McDowell, to say that your dixie brand is made from the soft but not the oily product, that is, that which is soft—

A. The is the interpretation of the term, yes; as a matter of fact, the Dixie brand is oily, contains a certain percentage of oil but it is not very apparent, not so apparent as the Seminole.

Q. Now, would you say that the hogs that are killed and manufactured into the Dixie brand are those hogs that were —that have been fed upon peanuts, and probably finished on corn, so that the amount of the peanut oil was diminished by that finishing?

A. Mr. Haycraft, I cannot give you an answer on that, I do not know. The Government does not know; we have repeatedly asked them to answer that question for us, and they say they are not ready to answer it. The last thing that we have from Washington was that they thought they could answer that question inside of twelve months, just a short time ago; I think they can.

Q. Well, it is apparent, however, that there is a number of hogs being put on the market that are not as oily as the average run?

A. Yes sir.

Q. From those hogs you make this Dixie brand, as I understand it?

1607 A. From the best part of those, yes sir.

Q. The Premium brand, I take it, is from the hog which is hard, that is, cornfed?

A. Strictly hard, yes sir, those few that are strictly hard, fully up to the standard of the western hard hog.

Q. Now, there has been considerable testimony both by yourself and Mr. Davis in regard to the way in which the products of the Moultrie plant are being sold in this territory adjacent to Moultrie; I will ask you to state the territory covered by the sales organization operating out of Moultrie as a branch house during the time that the private car lines were being operated; I think it is in the record, probably, in one place?

A. Yes sir.

Q. But I want to get it just before me now so that I can have it in mind?

A. Mr. Haycraft, I would have to answer that question in a general way; I would have to refer to the map to tell you accurately. That is the so called car route territory previous to May 2nd, 1921.

Q. That is inclosed in the red pencil on the exhibits 11 and 12?

A. Within the lines shown in red.

Q. Was that territory continuous all the time that you were manager?

A. Yes sir.

Q. Handled by the plant here?

1608 A. Yes sir.

Q. How about immediately after it was taken over by Swift & Company in July 1917, do you remember—were you in charge then?

A. I was not in charge, but I know from correspondence which I have handled in Chicago previous to that, if you want me to testify from that angle?

Q. Yes, that will be sufficient?

A. They took over this territory of which we are speaking from the branch houses on or about January 1st, 1918.

Q. 1918, then would you say from January 1st, 1918, up

until May 2nd, 1921, the Moultrie plant of Swift & Company, operating as a branch house covered this territory by salesmen, sold the products of Swift & Company?

A. That is a fact, except that Moultrie did not take over all of this momentarily, all at the same time; there was one territory, part of this Florida territory came in about a year later, part of this territory around Waycross, down in there, came in after I came to Moultrie.

Q. Now, then—

A. They constantly—there was a branch house there up until I came here.

Q. You mean at Waycross?

A. Yes sir.

Q. And the territory immediate surrounding—I mean the territory served by the Waycross branch was taken over

1609 by the Moultrie branch at that time?

A. Yes sir, the Moultrie plant.

Q. Did the salesmen during that time, of Swift & Company, carry the full Swift line of products?

A. Yes sir.

Q. About how many salesmen did you have during the period of time that you were operating out of Moultrie?

A. I believe the greatest number was twenty-five.

Q. Now, by a full line would you say that most of the products which are listed on S. & W. branch house list, Exhibit No. 197 and 198, were sold by the salesmen in that territory at that time?

A. Yes sir.

Q. You stated on the record that about ten million pounds of western products were shipped into this plant and distributed in this territory every year, as I understood you; yesterday an exhibit was presented by counsel for the respondent showing the tonnage purchased by years, 1918, 1919, 1920, of various kinds of meats, meat products, and other products handled through this plant during those years?

A. Yes sir.

Q. Referring to this exhibit, can you state the products covered by the miscellaneous item, give a description of the products covered by the item miscellaneous?

A. I know what it should cover, because I gave the

1610 instructions with reference to the making up of that report.

Q. What products would you say it covered?

A. I told them to visit under one heading all kinds of fresh or frozen meats.

Q. That is pork as well as beef products?

A. Yes sir. To list under another heading all other prepared meats, other than canned meats.

Q. That would include smoked and dry salt?

A. That would include smoked and dry salt and others, cooked and vinegar pickled, and all that, different kinds of meats other than fresh; I told them to prepare another item including all lard and shortenings; that would also include what we call cooking oils; all shortenings; I told them to throw under another heading any miscellaneous—all other outside products in which Swift deals, which was brought in from the outside.

Q. And those products, of course, would be the products covered in a general way on these price lists that I have in evidence here?

A. In a general way, yes sir, there might be something special that would not be shown there, from time to time.

Q. I notice that in 1918 the amount or quantity of outside purchases was considerably smaller than 1919 and 1920, especially 1920, would some of that difference be due to the fact that you did not have as much territory to cover by your salesmen during that year?

1611 A. That would, yes sir, that year.

Q. 1918?

A. Because after that date, after 1918, we took over this one remaining territory, which the plant had not handled up to that time.

Q. Do you recall the number of salesman you were operating in 1918?

A. No sir. The total tonnage of outside purchases of products for the period shown as 1918 covers sales only from January 1st to October 30th, 1919, and is also affected by the fact that the car route territory was not as large during this same period as it was during the subsequent years.

Q. Did your salesmen carry any other lines of meats besides Swift & Company's products during any of that period of time when they were calling on the trade? What I have in mind, did they carry any of the affiliated corporations, corporations affiliated with Swift & Company, such as the North Packing & Provision Company or John P. Squires?

A. Yes sir, we bought from possibly all of the Swift &

Company plants, and we bought some dry salt meat from the North Packing Company.

Q. Now, would that be included in this outside purchases by years, this statement?

A. Yes sir.

Q. So that a salesman, a Swift & Company salesman
1612 operating out of Moultrie plant, carried the same line of goods, the same lines of goods, that any other Swift & Company salesman operating out of the ordinary branch house, is that true?

A. Practically so, yes sir.

Q. Now, Mr. McDowell, do you have in mind an independent recollection or have you got records where you can quickly get to them to make some calculation of the total sales of all products by the Moultrie plant in this particular territory served by these route lines in Exhibits 11 and 12 during the years 1918, 1919, and 1920, as covered by this Exhibit No. 20?

A. I can answer clearly only on the fiscal year 1920, that was a tonnage of 11-1/2 million pounds. I would like to state here, too, for your information, that I had that statement before me shortly before I testified the other day, and that is how I came to make this mistake of saying that we were selling eight to ten million pounds every year of this western product, it was the total car line volume that mixed me up there; eleven and a half million pounds for the fiscal year 1920.

Q. Then that would leave something like two million pounds of the Moultrie products sold in that territory?

A. Yes sir.

Q. You have not any recollection in 1919?

A. No sir, I don't remember; I have seen it, but I cannot testify to it off hand; we could give it to you.

Q. Would it take very long to bring that down?
1613 A. It is already prepared.

Q. Oh, it is?

A. Yes sir.

Q. For the year 1919 also?

A. Yes sir.

Q. Well, I should like to have that if you could get it without too much trouble, I would like to have it to go in the record to show the comparison of the amount, the volume?

A. I am sure it is out there, already compiled, we can put out hands right on it.

Q. Do you recall how many branch house territories were pared to make up this Moultrie territory, covered by the Moultrie car lines and salesmen in 1918?

A. I don't understand the question.

Q. From what branch house territories was the Moultrie plant territory made up in 1918?

A. Columbus, Georgia, Macon, Savannah, Augusta, Jacksonville, Pensacola, Waycross.

Q. That is, Waycross was taken over?

A. We did not take their territory from them until early in 1919.

Q. Do you know what branch house served this territory at Moultrie Packing Company?

A. Only know from what people have told me since I came here.

1614 Q. Well, it was one of these branches that you have named, it was either Columbus or Macon, was it not?

A. It was both.

Q. I believe you testified, Mr. McDowell, that the usual spread between the Chicago market price of live hogs and the market price paid at Moultrie for the same grade of hogs, by Swift & Company, was from one to two cents?

A. Yes sir.

Q. Now, is that an average figure that you have in mind?

A. Yes sir.

Q. I suppose there are times when the spread is more than that, is there not?

A. It might be for—on small purchases, and for a short length of time, but it does not amount to anything.

Q. How about the period of time when what they call the rush season was on, the 1st of November until the 1st of February, when most of the hogs come in here, is that a wider spread at that time between the Chicago price and the Moultrie price than ordinarily?

A. That is the time, naturally, when the—that we buy hogs at that maximum of the average to which I testified, although our average purchase price of hogs, as compared with the Chicago or western market, does not fluctuate to any material extent at any time during the year.

Q. What is the differential right now?

1615 A. About two cents.

Q. I believe you stated yesterday upon direct examination that this plant secured its hogs principally from what is known as shippers?

A. Yes sir.

Q. Through the hog raising territory, and approximately seventy per cent of the hogs killed in this territory were bought in that way, is that correct?

A. I don't know whether I said seventy per cent or not; If I did, I should have said more, I think ninety to ninety-five per cent of them reach Moultrie through these live stock shippers, carload shippers.

Q. How are those bought, how do those shippers buy them, if you know?

A. They buy them in small lots from individual farmers until they accumulate a carload lot, and then they offer them to the packers.

Q. Do you recall the names of some of the principal shippers of live stock, or hog shippers from whom you bought hogs in the last two or three years?

A. I can name some of them.

Q. I wish you would name a few of the larger ones?

A. W. W. Wade of Quitman.

Q. Where is he located?

A. Quitman, Georgia. Hall Commission Company, 1616 Sparks, Georgia. Gibbs, Tifton, Pless & Miller, Cordele, Harper Brothers, Albany; Voldosta Stock Yards Company, Valdosta, Robins & Reynolds, Donaldsonville, Metcalf, Camilla; I forget his initials; Metcalf Live Stock Company, Camilla; Chapman, Bereick, Georgia; Perkins, Bainbridge, Georgia; there are a great many others, sixty or sixty-five others, that I do not recall at the moment. Those are the ones who shipped to Moultrie regularly.

Q. By shipping to Moultrie do you mean to the plant here?

A. Either direct to Swift & Company or to the—since November, 1920, through the Commission firms in the stock yards.

Q. Now, of course these shippers bought for others than the Moultrie Packing Company during the time, say for the last two or three years?

A. Yes sir.

Q. Do you know anything about what other markets they had for their live stock besides the Moultrie Packing Company?

A. Yes sir.

Q. What markets would you say they shipped to?

A. These people shipped to White Provision Company,

Atlanta; Armour & Company, Jacksonville; the commission firms on the Montgomery stock yards, and the commission firms on the New Orleans stock yards; the Birmingham Packing Company, Birmingham, and the packing plant at Buford, South Carolina, Orangeburg, South Carolina, two packing plants in Savannah, Georgia, three small packing
1617 plants in Jacksonville, Florida; the Davis Packing Company, Mobile, the Chipley Packing Company, Chipley, Florida, the packing plant at Waynesboro, South Carolina, Statesboro, Georgia; that is about all.

Q. That would be during the time that those local plants were running, that would be 1918, 1919, and say 1920?

A. All of the plants which I have just mentioned operated during the past twelve months, with the exception of the Chipley Packing Company, Chipley, Florida, and bought live stock continuously in our so-called territory.

Q. How about the Statesboro plant, hasnt that been closed down more than a year?

A. Yes sir, but it reopened last fall; Mr. Brooks testified to that fact.

Q. When did the Tifton plant close down?

A. The Tifton plant closed down in the spring of 1920.

Q. And the Waycross, when did that close down?

A. Before I came here.

Q. As a matter of fact, didnt some of these shippers ship quite a few hogs to Cuba within the last year?

A. Yes, sir, that I forgot; Harper Brothers this last season shipped nearly all their live stock on Cuban orders; we got some of it; wheenver they did not have a Cuban order, we got it all. That is, they told us they were letting us have it all, or the stock yards company, I mean; that was true of Robinson & Reynolds at Donaldson; they were recog-
1618 nized Cuban shippers this last season; they shipped to Williamson & Dennis at Jacksonville; they are the biggest Cuban operators in this section.

Q. How about Fred Wolf, is he known as a buyer and shipper in this territory?

A. Yes sir.

Q. Cuban buyer?

A. Yes sir.

Q. As a matter of fact, the shippers who were shipping to Cuba were considerable factors in this territory last year, were they not?

A. They were somewhat of a factor this last season than

before, because of the less available total supply; they got a larger percentage of the total supply this last season, this last twelve months, than before.

Q. Didnt some of these shippers that you named ship to commission firms in St. Louis, Louisville, Kentucky, Nashville, Tennessee, Baltimore, Maryland, Richmond, Virginia?

A. I cannot answer that question definitely, although I never heard of any of these shippers with whom we have done business ever making shipments of hogs to Louisville or St. Louis; I have heard of their—very slight shipments being made from this territory to Richmond, and Cincinnati and Louisville, none to Nashville. I meant Nashville when I said Louisville there.

Q. If Swift & Company could have paid as much or more than was paid by the shippers who shipped to Cuba
1619 during the past year, could they have come nearer operating up to capacity at the Moultrie plant than they have?

A. If we had bought all of the hogs that I think went to the Cuban market from our territory, in addition to what we did buy, we would have operated this plant during the killing season up to about fifty per cent of its capacity. Cuba is not a big factor, from all the information I have they never bought more than four thousand hogs a month, and it is usually between one and two thousand hogs a month; it is ont a big factor.

Q. How many carloads would that make?

A. Ordinarily in this market they ship sixty hogs per car.

By Mr. Horton: Q. Packer hogs?

A. Packer hogs, that is what Cuba takes, mostly.

By Mr. Haycraft: Q. By the way, what railroads bring these hogs into Moultrie, what railroads serve the Moultrie market here?

A. The Georgia & Florida Railway, the Georgia Northern Railway, the V. M. & W. Railroad, the A. B. & A. The V. M. & W. is now out of business.

Q. Since you have been operating this plant, havent you found that there is always a scarcity of hogs in the summer time?

A. Yes sir.

Q. That is, I mean by that, a scarcity of hogs ready for market?

A. Yes sir.

1620 Q. That is one of the problems that you have to overcome here is the encouragement and education of the farmers to produce more hogs for the summer market, isnt it?

A. Yes sir.

Q. That is, more packer hogs?

A, To develop an all year round, adequate supply.

Q. And that of course will work a two-fold purpose, that is, it will assist you in operating up to capacity, and overcome the large overhead expense that you have to pay, whether you kill hogs or not, is it not?

A. Yes sir, that would be one of the objects attained.

By Mr. Horton: Q. Also benefit, the farmers, too, would it not?

A. The main object of our propoganda in that respect would be to stabilize the hog raising proposition in the south, we feeling that the hog producer here would not stay in the hog business permanently unless he did adopt all year round marketing methods, because he would not run the chances of making money on his hogs if he sold the biggest percentage of them on the low winter market.

By Mr. Haycraft: Q. Of course, I am trying to find out what benefits, if any, would come to Swift & Company as the result of an all year round market or an increased production of hogs in this territory. There has been consid-

1621 erable testimony along the lines you have suggested here, but I am trying to find out if there would not be some ultimate benefit, at least, to the packer in this territory under those conditions.

Mr. Horton: Probably on the theory, Mr. McDowell, that you will be disgraced if you attempt to show that you tried to benefit yourself.

Mr. Haycraft: Not at all. I am trying to get the facts, whether or not it would be a benefit; I want to see, from the packers' standpoint, just what the result would be, the effect would be of an increased production of hogs in this territory in the winter time or all the year round.

A. We are very candid in telling the producer always, when we try to show him the benefits to him of marketing his hogs throughout the year, that we will also benefit, and we explain to this farmer in detail how we will benefit; we admit we will be benefited.

Q. Let's see how you will be benefited, the packer?

A. We tell the farmer that while the hogs we buy from

him in the so called summer time will cost us a great deal more money than if purchased in the winter, that we will save money by producing this product in the summer instead of in the winter and having to carry it from six to ten months before we can sell it; we save interest charges; we tell him that if we can kill about the same quantity the year around, we can maintain a well balanced organization, and that
1622 is a saving for this plant; we can save on operating costs by keeping our killing up to a large number rather than a small number; for instance it costs us just as much to kill a hundred hogs as relating to certain forms of expense as it would to kill five hundred.

Q. Now, I believe you also testified here that you always encouraged the farmer, or rather always discouraged the farmer selling his pigs, young hogs?

A. Yes sir.

Q. Isnt one of the reasons that you discourage him from doing that that the shrinkage to the packer is more on a young smaller hog in proportion to the whole hog than it is on a large well-grown hog, was 220 pounds?

A. No sir, that was not the reason.

Q. How is that?

A. That was not the reason.

Q. That was not a reason, you say that is a reason, isnt that one of the reasons taken into consideration?

A. No sir, we dont take that into consideration to any extent, except in naming and setting the price that we will pay for a pig; we know they will shrink less, or yield less, and we price them accordingly; that is put behind us when we buy the pig; there is no loss after we buy the pig, because of that less yield on pigs than packers.

Q. How about the demand for such sized pigs, whole pigs in the southern market, dont you find that butchers like
1623 to buy a whole pig? and cut it up themselves?

A. There is a certain demand, but there is not demand enough, or was not demand enough through Swift's various outlets in the year 1919 and 1920 to sell the pigs which we killed as shipper pigs and dressed whole; we had to ship them outside of our territory, to the north, in order to get rid of them.

Q. Of course I suppose, Mr. McDowell, you do take into consideration the fact that there are some farmers who feed their pigs all the feed that they have on hand and they have

not money to buy more feed, and they are compelled to sell the pigs before they are thoroughly matured?

A. Yes, Mr. Haycraft, I was thoroughly conversant with the reason for the sale of these pigs; we have studied the situation and we know why. In practically every instance the reason the farmer wants to sell his pigs is that he sees his feed giving out, but against that argument on his part we ask him to prepare land for the next season with an adequate supply of feed, so that he wont be placed in that position, of sacrificing his young hogs.

Q. On the other hand, there are a number of farmers who have a surplus of feed, are there not?

A. Yes sir.

Q. And who can afford to buy these shipper pigs and put them on the farms and increase their size and sell them at a profit?

A. Yes sir.

1624 Q. Well, then, isnt it a pretty good transaction for the farmer who has not the feed to sell his hogs on the market, hoping that the farmer who has the feed may buy them?

A. That would be laudable, if he did it for that reason; we act as the intermediate agent in that transaction just as far as we can possibly find another buyer for these feeder pigs.

Q. As a matter of fact, quite a number of these commission firms that you have named, these shipper who buy these shipper pigs ship them to other territories, some in Tennessee, some up in the Carolinas, even the west, where they are finished, fattened on other products, corn products, fed corn and other products?

A. It is a fact, that is a fact, these commission men play the game, knowing that somebody could make a profit on these pigs. They try to keep them away from the slaughter houses, and that is a fact, I think, they buy and then sell those pigs back to producers and farmers somewhere to be finished.

Q. Yesterday counsel for the respondent introduced some pamphlets which I believe you testified were distributed?

A. Yes sir.

Q. Referring to Respondent's Exhibits No. 14 and 15, I will ask you whether or not those two pamphlets do not contain practically the same information on the inside?

A. They follow the same line of thought, yes sir, although the—

Q. Have practically the same cuts, and pictures?

A. Some of the same cuts? I have never noticed that.

1625 Q. What department of Swift & Company are they published by?

A. Animal feed department.

Q. What is that department, what does that department comprise, what does that cover?

A. That department looks after the sale of animal feeds which are manufactured by Swift & Company, and also is a recognized department for the handling of animal husbandy matters that come up in this country, in work with the farmers, to assist them in learning the live stock business, or bettering their live stock production, that department handles that.

Q. These pamphlets, however, contain descriptions and reasons for the use of various animal feeds manufactured by Swift & Company, do they not?

A. Yes sir.

Q. Would you say then that one of the reasons for the issuance of these pamphlets was to dessiminate information about Swift & Company's feeds that they have to sell to farmers in increasing their hog production?

A. Yes sir; that was one of the purposes.

Q. The first day you testified, Mr. McDowell, as I recall you explained the way in which the—in which you attempted to push the sale of the products manufactured by the Multrie plant; do you know of any amount of money that has been spent by Swift & Company in the advertisement of these southern products, southern brands?

1625½ A. No sir, I don't know how much.

Q. Do you know whether any money has been spent at all in the advertisement of the southern brands of products?

A. I could not tell you specifically; we frequently cooperate with dealers, where dealers run local adds or issue hand bills, we bear a portion of the expense; that is a trade condition or custom, advertisements of that nature are all that I know of where we have participated in sharing the expense.

Q. Advertising in the daily newspapers and magazines is the recognized method, is it not, of pushing and increasing the sales of any product?

A. Yes sir.

Q. I believe you testified yesterday that Swift & Company had no interest in the Moultrie stock yards?

A. Yes sir.

Q. By that do you mean that Swift & Company has not any interest whatever, one way or the other, in the yards, or did you mean that they do not own any stock?

A. I mean we do not own any stock in it, no part of the stock or physical assets.

Q. As a matter of fact you own the land upon which the buildings were built, you leased that land to the stock yards company have you not?

A. Yes sir; our only interest is in the money we receive for the lease of the land.

1626 Q. Do you have that lease here is is that in Chicago?

A. That is in Chicago, you would have to see it there; we completed it here, but forwarded it to them.

Q. You are quite sure of that, are you, Mr. McDowell?

A. Yes sir.

Mr. Haycraft: That is all.

Redirect Examination by Mr. Horton.

Q. Mr. McDowell, I believe you have testified you are manager of this plant down here?

A. Yes sir.

Q. What are you trying to do in regard to the operation of this plant?

A. Trying to make money; that is, operate the plant profitably.

Q. Now, are you concerned with selling the product of this plant?

A. Yes sir.

Q. Do you use your first effort to that, your strongest efforts?

A. Yes sir.

Q. Do you bring any products from the north that you can furnish from this plant, the north or west?

A. Yes sir.

Q. Now, explain that statement, please?

A. Explain about the product we bring in from the west?

Mr. Haycraft: Mr. Examiner, I ask that counsel be instructed not to lead his witness; I think the witness is

1627 perfectly capable of answering the questions without being led.

Mr. Horton: Read the question and the answer.

(Question and answer read.)

A. I did not understand the question; the proper answer for that question is we do not bring in from the outside anywhere products that are available from our local production.

Q. Now, what do you say as to the yield of the hogs that come from this territory as compared with the yield from the western hogs?

A. The yield of the hogs at this plant as compared with the average yield at the western plants is from three to six per cent less.

Q. Just what does that statement mean, please?

A. That means that the dressed weight of the hogs, of the carcass of the hog, after it has gone through the killing floor, before it is cut up, is from three to six per cent less than the percentage of the original live weight that the western hogs average.

Mr. Horton: That is all.

Recross Examination by Mr. Haycraft.

Q. Just to get my mind clear on why you carry—why you have such a large quantity of western products—why you sell such a large quantity of western products through this plant, and still do not bring in goods which you have here, I 1628 would like to ask you to explain, go into detail as to just how you handle western goods in connection with your Moultrie goods. When the salesman goes out to take orders does he take the orders for western meat at the same time he takes the orders for the Moultrie products?

A. Yes sir, but we dont have the same product from the west or the same average of a product in the form of western goods that we have available of local production. For instance, we bring in practically all of our Premium brand meats from the west, because we cannot produce this from the local hogs.

Q. You cannot produce them, you mean, in quantities sufficient to supply the demand?

A. Yes sir.

Q. How about the second grade, do you bring in the full line of western products, so that the customer who prefers western hard finished products to Moultrie soft finished products, you can supply that trade?

A. Yes sir, we do that where there is any demand.

Q. Dont you carry—didnt you carry when you were running these carlines here, a full line of Swift's products, so that whenever an order was sent in by a salesman for any Swift product, you could fill that order without sending to Chicago?

A. No sir, positively not.

Q. Well, how did you fill the order?

A. We classified our Dixie meats and Seminole hams as taking the place of the Western Empire brand, we never
1629 brought in any Empire hams to this plant, because we figured that the Dixie and Seminole would take the place with the dealers.

Q. Is that true of bacon?

A. Yes sir.

Q. Dry salt meats?

A. That is true, yes sir, of everything.

Q. How about fresh meats?

A. That is true of fresh meats, everything other than Premium, that grade of meat.

Q. Then as I understand you, if the customer in Moultrie or any place in this territory was called upon by one of your salesmen and wanted Empire ham, he could not buy it; he would have to take the Dixie ham or the Seminole, is that right?

A. He could not buy Empire ham, but he could buy Empire quality under the local brand, or practically Empire quality.

Q. That would be a local product, would it not?

A. Yes sir.

Q. Would not be corn-fed, hard ham?

A. No.

Q. He could buy Premium, however, you carried Premium in stock?

A. Yes sir.

Q. Well, supposing this merchant wanted to buy a hard loin, corn-fed loin, corn fed fresh ham, could you supply this demand, or would you make him take the Moultrie product?

A. We have hard loins produced at Moultrie suffi-
1630 cient to supply the demand for the—specific demand for a hard pork loin or the demand for a hard piece of meat of any other cut of the hog, fresh meat.

Q. That is, in the territory that we are talking about?

A. In this territory.

Q. Then you have had no occasion to import western pork loins?

A. Except where our own ran short of a certain average or at certain times during the season we would handle ninety per cent western loins, had none of our own, practically so; we simply brought in averages from the west that were not available here.

Q. Of course, that would have no reference to the line of products which were not produced here at any time, such as cheese or eggs, butter, things of that kind, or the canned meats. Of course you did import those, because they could not be produced at Moultrie?

A. We produced some. We buy a great deal of cheese and butter and eggs in the south; do not get it all from the west.

Q. I didnt know—where do you your cheese in the south?

A. At the present time we are getting it all from the Carolinas, dont get any from the west.

Q. That is not in the immediate territory here, however, you buy that through Chicago, or buy it direct?

A. No sir, buy it direct.

Q. Would that be included in that exhibit which was produced here, Exhibit No. 20, the cheese that you bought
1631 from the Carolinas among those miscellaneous products.

A. Yes sir.

Mr. Haycraft: That is all.

Examiner Sadler: Any other examination?

Redirect Examination by Mr. Horton.

Q. How many days a week can you run your plant right now, Mr. McDowell, July and August?

A. We actually operate to some extent, in some department, five days a week; there is one day that we close down, we have been able to this summer.

Q. How many days can you kill?

A. We only kill on an average of one day a week this last thirty days, sixty days, will continue that way, looks like for two or three months longer.

Q. Why is that?

A. Because the hogs—because of lack of supply of live stock; it takes a week to accumulate enough to warrant us in killing one day. We cannot kill hogs or cattle or hogs and cattle jointly until we kill enough to give us a tank of fat; it is a loss to render or cook less than a tankful of grease and

fat, so that we wait until we get a big enough kill to fill up one tank.

Q. Do you have to hold these hogs and cattle until you accumulate that one days' killing?

1632 Q. State whether or not that is an expense?

A. That is an expense in two ways, not only the feed which we give the live stock, but the live stock shrink during this holding period; the feed we give them does not cover the shrinkage.

Mr. Horton: That is all.

Mr. Haycraft: No further cross examination.

Examiner Sadler: The witness will be excused.

(Witness excused.)

1633 MR. C. H. WALLOW was thereupon called as a witness, and having been first duly sworn, testified in substance as follows (pp. 3611-3615, 3617-3619):

That he is the same Mr. Wallow who previously testified in this case at Chicago, Illinois; that he knew Mr. Sam Smith of Jacksonville, Fla.

A. At page 1416 of this record Mr. Smith testified as follows: "Question: Now, after this, did you continue to sell the Moultrie products?

"Answer: No sir; I did not; I quit right then.

"Question: Now, can you fix the date when you did quit?

"Answer: About the last of July, 1917?" Do you know anything about that, Mr. Wallow?

A. That is my understanding, he left us about the 25th, between the 25th and the 1st of August.

Q. Did he leave of his own free will and accord?

A. Yes, sir.

Q. Of his own volition.

Mr. Taylor: I object to that as calling for a conclusion of the witness.

A. Yes sir.

1634 (Witness withdrawn.

H. McDOWELL was thereupon recalled as a witness and having been previously duly sworn, testified as follows:

Redirect Examination by Mr. Haycraft.

Q. Mr. McDowell, were you able to produce that statement this morning that you referred to in your testimony, covering the total volume of sales in the territory supplied by the Moultrie plant, 1918, 1919, 1920?

A. Up to the present time I have not been able to produce the figures requested.

Q. In the form that they would correspond to the Exhibit No. 20?

A. Yes sir.

Q. Does the Chicago office have those figures?

A. They do.

Mr. Haycraft: Then I will not ask that you produce them this morning.

1638 Docket No. 453.

Andalusia, Alabama, July 25, 1921.

Met pursuant to adjournment from Pensacola, Florida, at 10 o'clock A. M. July 25, 1921.

Before:

Clarence T. Sadler, Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

Mr. Horton: Mr. Taylor, referring to the report made to the Federal Trade Commission of the Andalusia Packing Company, which is marked for identification "A-23, Witness Henderson," was all this offered in evidence?

Mr. Taylor: Pages four, five and seven were offered in evidence and marked. It is indicated by pencil you will notice at the bottom righthand corner of the pages. The balance was not offered.

Mr. Horton: Then I offer in evidence the balance of the report.

Mr. Haycraft: Also what is attached to it?

Mr. Horton: Let's see? (Examines same.) Yes, I offer the whole thing.

Mr. Taylor: I object to the offer, except insofar as it was already received in evidence, as it is irrelevant and immaterial to the issues, and second, because it is incompetent, being a self-serving declaration. It was only offered on behalf of the Commission as an admission against interest by
1639 the respondent.

Evaminer Sadler: The objection will be noted, and the schedule will be received in evidence subject to the objection and marked "Respondent's Exhibit No. 22."

Mr. Horton: I would like to ask if the Schedule A, the report made to the Federal Trade Commission by the Andalusia Packing Company, and marked for identification "A-22," has already been offered in evidence?

Mr. Taylor: It is already marked as an exhibit and received in evidence, is it not?

Mr. Horton: I will offer this exhibit as marked in evidence and any exceptions which may be will appear on the record at the time the offer was made and the exhibit received.

Examiner Sadler: Who will you have?

Mr. Horton: Mr. Mathews.

1640 R. W. MATHEWS, C. M. WILLIAMSON, and E. M. FAHEY were thereupon called as witnesses on behalf of respondent, and after being first duly sworn, testified in substance as follows (pp. 3668-3750; 3756-3762; 4043-4044, 4130):

Mathews—that he was at present the auditor and chief accountant for Swift & Company at Andalusia; Williamson and Fahey, that they were former auditors and bookkeepers at the same plant.

These witnesses produced, identified and authenticated the books of the company which showed the number of hogs killed by months at the Andalusia plant, the number of cattle killed by months at the Andalusia plant, and the financial results of the operation of the plant. The books were offered and received in evidence and permission was given to withdraw the said books and substitute an exhibit prepared by the witnesses, therefrom. Said Exhibits were received in evidence and marked "Respondent's Exhibits Nos. 23, 24 and 25" respectively.

Witness Fahey then produced, identified and authenticated books and records of the company which showed carload shipments of various packing house products to various points for the last half of the year 1917, all of the years 1918, 1919 and 1920, and the year 1921 up to July 21st by years. The books were offered and received in evidence and permission was given to withdraw the said books and substitute an exhibit prepared by the witness. The said exhibit was received in evidence and marked "Respondent's Exhibits No. 26."

1641 Witness Mathews produced, identified and authenticated the books of the company which show the amount of money invested in lands, building and machinery on July 24, 1917, also investments in lands, buildings and machinery on July 2, 1921. The books and the contents thereof were further identified by witnesses Fahey and Williamson. Books were offered and received in evidence and permission was given to withdraw the books and substitute an exhibit prepared by the witness showing investment on July 24, 1917 and also the investment on July 2, 1921. Said exhibit was received in evidence and marked "Respondent's Exhibit No. 27."

Witness Fahey then produced, identified and authenticated books and records which show the number of hogs slaughtered by the Andalusia Packing Company by months and also the average live cost of the hogs by months. The books were then offered and permission was given to withdraw the books and substitute an exhibit prepared by the witness. Said exhibit was received in evidence and marked "Respondent's Exhibit No. 28."

Witness Fahey then produced, identified and authenticated books and records of the company which showed the number of hogs purchased by months from August, 1917 down to May 1921, and also the average live cost per hundred pounds. The books were offered and received in evidence and permission was given to withdraw the books and substitute an exhibit prepared by the witness which said Exhibit was received in evidence and marked "Respondent's Exhibit No. 29."

1642 Witness Fahey then produced, identified and authenticated books and records of the company which show the carload shipments and destination by years of products shipped from the Andalusia plant beginning July 30, 1917 and down to July 25, 1921. Books and records were offered and received in evidence and permission was given to with-

draw the books and substitute an exhibit prepared by the witness, which said exhibit was received in evidence marked "Respondent's Exhibit No. 30."

1643 H. H. McKEE was thereupon called as a witness, and being duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. What is your name?
A. H. H. McKee.
Q. Where do you live; at Andalusia?
A. Yes, sir.
Q. What is your occupation?
A. Superintendent and acting manager when Mr. Thweatt is away.
Q. Of this plant?
A. Yes, sir.
Q. How long have you been at this plant?
A. I have been at this plant since March, 1918.
Q. In the same capacity?
A. Yes, sir.
Q. How long have you been in the livestock business—I mean, in the packing business?
A. Twenty years, since 1900.
Q. We have just produced an exhibit here, referring to Respondent's Exhibit No. 28, which shows the number of hogs purchased by the Andalusia Packing Company, and the average live cost per hundred pounds, from October, 1916, to July, 1917. We have also produced an exhibit which is not yet identified,—
Mr. Horton: I will ask to have it marked for identification.
1644 Examiner Sadler: It will be marked "Respondent's Exhibit B-18" for identification.
(Thereupon the exhibit was marked "Respondent's Exhibit B-18" for identification.)
Q. (Continuing)—which is now marked "Respondent's Exhibit B-18" for identification, which shows, instead of the number of hogs purchased, the number of hogs slaughtered from August, 1917, to May, 1921. Now, is there any difference, so far as the exhibits are concerned, for the purpose of

showing what the average live cost is, between the number of head purchased and the number of head slaughtered?

Mr. Taylor: I object—

A. Absolutely not.

Mr. Taylor: I object on the ground it is not a proper subject for expert evidence, and I move to strike out the answer which was made while I was making the objection.

Examiner Sadler: The objection and motion to strike will be noted.

Q. Why not?

A. Simply because all the hogs entering the plant,—with the exception our records show, starting April, 1920, and ending the last part of October, 1920,—all hogs entering the plant were slaughtered at this plant.

Q. When were they slaughtered in reference to the time they were bought?

1645 A. The records show we held no hogs longer than seven days at a maximum.

Q. What is the usual practice about slaughtering with reference to the time they were bought?

A. Forty-eight hours after received.

Q. Within forty-eight hours after received?

A. Yes, sir.

Q. As a matter of practice in what length of time do you slaughter them?

A. I work on the basis of slaughtering the hogs at this plant after being unloaded at our yards.

Q. Calling your attention to Respondent's Exhibit B-18 for identification, for the months of August, September, October, and November, 1920, and I will ask you whether or not you purchased more hogs than that during those months?

A. Yes, sir.

Q. What did you do with them?

A. Shipped to Swift & Company at Moultrie.

Q. Why was that?

A. On account of there being an insufficient number to operate the killing gang at this plant.

Q. Whether or not that is all the available supply of hogs there was at that time?

A. That is all we could buy at the market prices.

Mr. Horton: That is all.

1646 *Cross-Examination by Mr. Taylor.*

Q. Aside from the cases you have spoken of, has this plant slaughtered all the hogs it has bought?

A. With the exception possibly of what might die in the yards, which the records would show.

Q. Which would be included in the purchased list and not in the killed list?

A. It would be—yes, that is right.

Q. Now, when did you come to this plant?

A. March 18, 1918.

Q. These questions were asked for the purpose of comparing the statement to a period from October, 1916, to July 1917, with the succeeding period. Now, you would not attempt to state what was done here during the years 1916, and 1917, down to the time you came here, would you?

Mr. Horton: I beg your pardon; that question was not asked the witness.

A. I have not answered such a question.

Q. Will you please answer the one I just asked you?

A. Only what I learned from the records.

Mr. Taylor: Now, Mr. Examiner, I object to the offer and also to the exhibit; the exhibit does not purport to be a list of hogs purchased, a list of the hogs killed, as the exhibits offered show purchases, the exhibit No. 28, with which
1647 it is sought to be compared, or rather, it is sought to compare the statement, which is offered, shows the hogs purchased, and not the hogs killed, and therefore, it cannot be properly compared with the exhibit now offered.

Mr. Horton: Mr. Examiner, due to the violently technical objection of counsel for the Commission, we will endeavor to prepare an exhibit which will be exactly competent.

Examiner Sadler: The ruling on this exhibit will be reserved.

Mr. Taylor: Is this withdrawn?

Mr. Horton: Not by any means.

Mr. Taylor: If you will get a copy of Exhibit 28.

Mr. Horton: Yes, I will get you a copy.

Examiner Sadler: Adjournment will be taken until nine o'clock tomorrow morning.

(Thereupon adjournment was taken until nine o'clock A. M. Wednesday, July 27, 1921.)

1648 Docket No. 453.

Andalusia, Alabama, July 27th, 1921.

Met pursuant to adjournment, at one-thirty P. M.

Before:

Clarence T. Sadler, Examiner.

Appearances:

Messrs. A. N. Taylor and E. F. Haycraft, care of Federal Trade Commission, Washington, D. C., appearing for the Federal Trade Commission.

Mr. Frank L. Horton, care of Swift & Company, Chicago, Illinois, Mr. J. Morgan Prestwood, Andalusia, Alabama, and Messrs. Albritton & Albritton, Andalusia, Alabama, appearing for the respondent.

Examiner Sadler: The hearing will come to order.

Mr. Prestwood: As I understood your honor, in an informal way, with reference to what your ruling would be in reference to our appearance here, we want to state at this time that we desire the privilege of appearing separately, representing the Chamber of Commerce, and according to our petition, we offer to appear in that capacity, and to give this evidence that we are about to offer; we desire to appear for the Chamber of Commerce and the individuals who signed the petition for intervention.

Examiner Sadler: I will say that pursuant to the authority I have from the Commission, the privilege will be extended to the Andalusia Chamber of Commerce to
1649 have its attorneys, Messrs. J. Morgan Prestwood and Albritton & Albritton, as attorneys associated with the Respondent Swift & Company, to examine witnesses and adduce such evidence as they may desire relative to the alleged suppression of competition at Andalusia but not to go into conditions elsewhere.

Mr. Prestwood: Now, I understood, Your Honor, when I made the offer that that would be your Honor's ruling. We want to appear, not as associates with Swift & Company, but as counsel representing the Andalusia Chamber of Commerce, and the people who signed the petition we have here, for the purpose of offering our side of the matter.

Mr. Taylor: Mr. Examiner, as I understand the practice in such a case, any intervention must be passed upon by the Commission, and the request made by counsel amounts

practically to a desire to intervene, or rather a request to intervene, and in view of the authority and instructions received from the Commission, I submit that the Examiner is powerless to go further than he has already done in the announcement just made.

Examiner Sadler: I will state that I will have to abide by my instructions from the Commission.

Mr. Prestwood: I am stating this to the court because we want a ruling upon that.

Examiner Sadler: Then I will have to abide by the instructions which I received from the Commission, which would be my ruling.

Mr. Prestwood: Then you refuse to allow us to ap-
1650 pear in that way?

Examiner Sadler: Yes, sir.

Mr. Prestwood: So of course we desire to note an exception to that, Your Honor, to Your Honor's ruling in that respect.

Now as I understand, you will hold that we cannot offer any testimony at all unless we offer it as associate counsel with Swift & Company's attorney?

Examiner Sadler: Under the instructions which I have received, I would say yes.

Mr. Prestwood: We want to enter a protest and just get a ruling on that, Your Honor, and to note an exception along that line.

Examiner Sadler: Well, I will have to stand by my ruling; my original ruling.

Mr. Prestwood: Now, without waiving any right that we may have by virtue of the filing of our petition separately, for a separate intervention, we will go into an agreement with reference to taking the testimony.

We wish to state further as a matter of fact, that we do not represent Swift & Company, nor have we ever represented Swift & Company, but we are appearing here solely as representatives of the Andalusia Chamber of Commerce, and the other individuals signing the petition asking for intervention. Now, will you dictate that with reference to the testimony?

Mr. Taylor: With regard to your appearance, Mr.
1651 Prestwood, I would like to have it clearly understood on the record whether you are appearing here as associate counsel, or whether you are appearing here as attorneys for the Chamber of Commerce, and exercising the same

rights that you would, had the petition for intervention been granted.

Mr. Prestwood: Well, I thought that I made myself clear just then, according to the true facts as we have stated them, but that has been denied us, and we have entered a protest against the ruling; and now without waiving our rights along that line, we want to offer our evidence, if we can do it, through, or as associate counsel of, Swift & Company.

Mr. Taylor: You are willing to appear as associate counsel of Swift & Company and to examine the witnesses in that capacity and not as counsel for the Chamber of Commerce?

Mr. Prestwood: We have to do it. No, sir, we are not willing but we have just got to do it, and I do it, Mr. Taylor, if you will pardon me, in order not to lose our rights to make the objections later on.

Mr. Taylor: Yes, and there is no desire to allow you to lose any rights which you may have, but on the other hand, I think the record should be perfectly clear as to what is actually happening.

With reference to the proposed stipulation as to the testimony, I suggest that you state the proposition on the record about as you stated it to me, and I think we can readily agree to it.

1652 Mr. Prestwood: It is agreed by counsel for the Commission and counsel for the Respondent that objections and exceptions may be taken and noted on the testimony introduced at this hearing at any time before final submission of this case to the Federal Trade Commission, the said objections and exceptions to be considered by said Commission as if seasonably made at the time said testimony was offered. Is that all right?

Mr. Taylor: I think it is perfectly clear, and entirely agreeable to counsel for the Commission, it being understood that it applies to any part of any testimony of any of these witnesses.

Mr. Prestwood: Your Honor will let me make a brief statement to you with reference to our procedure?

Examiner Sadler: Go ahead, yes, sir; this privilege will be allowed.

Mr. Prestwood: We understand that the purpose of the organization of the Federal Trade Commission and the power that it is given to function, is done in the interest of the peo-

ple, and to prohibit and curb unfair competition, in order that the people may have a square deal in a commercial way. Now, we know, whether we can make it plain to the Commission hereafter or not, that it is a matter of universal knowledge throughout this whole section of the country in-
cluded in this county and the surrounding counties and
1653 in West Florida, that they are well pleased with the
fact that Swift & Company purchased the plant of the Andalusia Packing Company, and that by reason of that purchase greater facilities and greater advantages have been given to this community and to the surrounding territory than had been theretofore or than could have been done by the local concern. We know that if it were possible to interview every citizen in this whole section of the country they would be of one accord in desiring Swift & Company to be permitted to carry on their business of the packing industry at Andalusia just as they have done heretofore; and if it be that this Commission is working in the interest of the people,—and I presume that would mean the people of the section and the surrounding territory where the plant is located, and where the matter of the investigation, or rather, where the matter of the complaint is being investigated—would all be concerned—all those people would be concerned; I am sure that we can show to you and to the Commission that there is nothing about the situation but gratitude on the part of the entire country that we were able to get the service of a concern who would build up and develop the industry. And if we can,—and we say we think we can show that, that there is absolutely no unfair methods used on the part of Swift & Company after the purchase of the plant, but on the contrary, we were more anxious to sell than they were to buy. And even during the time we did operate the
Andalusia Packing Company, neither Swift & Company
1654 nor any of the larger packers used any unfair methods
with us, but on the other hand were the best buyers we had possibly. We sold most of our stuff to the big packers during the time we did operate the plant.

We are anxious for your honor to take this testimony and to be as patient as you can and as liberal as you can, because we are interested; as people here, we have an industry and it is in its infancy, and it has been the beginning of the making of this a great section of the state. We want an opportunity to write it in this record of our universal ap-

proval of the methods used by Swift & Company in the purchase of the plant and in its operation since the purchase.

Just one other thought that is suggested, and that is in the event the Commission should decide unfavorably to Swift & Company and should make the order that it can make under the statute, we firmly believe that it would mean the closing of this plant, because nobody else could buy it, unless it was another big packer, and if it should be closed, Your Honor, it would absolutely ruin this section of the country and West Florida, along the lines that I have just stated to you of the industry, the live stock industry. It is the only market we have, and we have, by virtue of its establishment gotten away from relying absolutely on the cotton industry. I think that is all.

Mr. Taylor: I would like to ask, Mr. Examiner, what counsel meant by the last statement, that the only place to
1655 sell live stock in the community was Swift & Company.

Mr. Prestwood: No, sir, I did not mean to make that statement. We will show altogether otherwise. That was developed the industry and developed the raising of stock because it was the first market that we had. I will say this, in answer to that, that this is really the only market for the one or two hog man, selling one or two hogs at one time. As to the carload lots, that is altogether different. Now we will take Mr. Dugger.

OSCAR M. DUGGER was thereupon called as a witness and being duly sworn, testified as follows:

By Mr. Prestwood: Q. What is your name?
A. Oscar M. Dugger.
Q. Where do you live, Mr. Dugger?
A. I live in Andalusia.
Q. How long have you lived here?
A. Since February, 1916.
Q. What is your business?
A. I am an editor and publisher of newspapers, two newspapers.
Q. What newspapers?
A. The Andalusia Star, and the Opp Messenger.
Q. Are you connected in any way with the Andalusia Chamber of Commerce?

A. I am.

1656 Q. In what capacity?

A. I am a director and president of the organization.

Q. Mr. Dugger, approximately how many members comprise the Andalusia Chamber of Commerce?

A. Approximately three hundred memberships; probably two hundred and seventy-five or three hundred memberships now, organization memberships; I mean by that, there are two memberships; a business membership at twenty-five dollars, and an individual membership at twelve dollars.

Q. I mean how many people?

A. There are not as many people as memberships. Some people have multiple memberships.

Q. Is there a couple of hundred or more?

A. I think there are two hundred members or more.

Q. What territory does that membership embrace?

A. That territory embraces Andalusia and then some memberships over the county, but the memberships are held largely in Andalusia, of course.

Q. And some over the county?

A. Yes, sir.

Q. Are there any outside of the county?

A. I am not quite sure, at this time; there have been some, but at this time I have not investigated to see whether there are any outside of the county but there have been some since the organization.

1657 Q. Do you know whether or not a great many of the people who are members of the Andalusia Chamber of Commerce were also stockholders in the Andalusia Packing Company?

A. Quite a few of them, yes, sir, were stockholders in the Andalusia Packing Company before it was sold to Swift & Company.

Q. That is what I mean?

A. Yes.

Q. Now, what are the purposes of the Andalusia Chamber of Commerce?

A. The purposes of the Andalusia Chamber of Commerce as I understand are those purposes common to all Chambers of Commerce. It has for its object the development of the territory of which Andalusia is the center, and in a more definite sense it would have to do, of course with the civic conditions, with reference to improving the civic conditions

of the community, and have to do with commercial development, and in the promotion of things tending to do that, and particularly in the farming, agricultural, and live stock industry, and concerning itself with those things which provide a market, because a market is one of the essentials which you have to have in the industry; you have to have a market for them.

Q. In fact, to encourage and to create better markets along all lines of industry?

A. To encourage and create better markets along all
1658 of industry, which would have to do with the transportation and highways; in other words, everything pertaining to community development, the Chamber of Commerce is an organization giving expression to everything pertaining to community development and the community idea along these lines.

Q. Now, were you here when the Andalusia Packing Company began to operate?

A. I was, but I came here before the plant was completed.

Q. And you have been here continuously since?

A. I have.

Q. Now, during the time you have been here, you have been engaged in the newspaper business?

A. Yes, sir.

Q. You kept up, did you, with the market conditions existing at the time the Andalusia Packing Company began to operate, and right on down until now?

A. As much so as a newspaper would I think.

Q. Well now, from your knowledge of the market conditions, that is, what was usually paid for live stock during the time the Andalusia Packing Company was in operation, and since Swift & Company purchased said plant here, in your judgment which has been the better?

A. Well, I would unhesitatingly say it has been better under the management of Swift & Company. I might give the reasons.

Q. Tell me why; yes, why?

1659 A. It was my understanding that at the time the plant was organized that there was at that time no definite market in this territory for live stock. In other words, when the plant was organized it was the purpose to have some market all the time, which would be a reasonable market, and that market as I understood was not based upon

any Chicago, or St. Louis or New York market, but it was an arbitrary market which was fixed so that the farmers would feel like they could produce hogs and sell them at the prices the packing plant would give.

Q. That was under the Andalusia Packing Company?

A. Yes, that was under the Andalusia Packing Company, and after Swift & Company took the plant over it has been my understanding that the prices paid by them for hogs has been governed by the general hog market, and since that they have paid prices in keeping with the prices paid elsewhere, and that there was not an arbitrary price, but a price made in keeping with that elsewhere. I will state, however, that the prices here have been somewhat under the prices paid at other points for the reason that this is a soft hog territory, and soft hog prices are always,—there has always been some margin between the soft hog and hard hog prices.

Q. I will ask you if you have not printed all along the market prices, Swift & Company's market prices, and if you have not compared them with the trade centers markets, such as Chicago all along?

1660 A. Well, I could say yes. I could not say that I printed it all along. For sometime, I don't know for how long a period, without consulting the record, and then I could say definitely about it, but for sometime, probably a year or more and maybe two years we have carried the market, I mean regularly, in the Andalusia Star, twice a week, you know, giving the market of that day, the prices obtained that day. I did not make a point of it to take that price and compare it with the prices which came out in the daily papers, but occasionally I did it; in other words, I would keep posted so as to know the prices were in keeping with the foreign markets, barring the reduction I referred to, that the soft hog prices were different.

Q. That was on grade?

A. Yes, that was on grade.

Q. I will ask you if you have not kept correspondents to the newspapers throughout this county and section since you have been running the newspapers?

A. Yes.

Q. That has been before the completion of the plant by the Andalusia Packing Company?

A. Yes.

Q. And during the time of its sale to Swift & Company?

A. Yes, sir.

Q. I will ask you if you have come in contact as a public man, and as a newspaper man, with your correspond-
1661 ents, and if you received any information, or did you receive any along about the time of the purchase and since then by Swift & Company of this plant, with reference to any dissatisfaction at all among the people of the section and among the stockholders?

A. I never have.

Q. And on the other hand, what was the sentiment?

A. As I would assess that sentiment it was unanimous that the change was beneficial, for this reason, that it was taken over by a concern that was able to finance it, and in such measures that would provide a market for all live stock that the farmers of this section could produce, whereas, the capital before was limited, and the amount that it would consume would necessarily be circumscribed; and that fact was sufficient to give a wonderful impetus to the growth and the raising of hogs in this territory.

Q. And cattle?

A. And cattle, hogs and cattle in this territory, yes.

Q. Well, right after the purchase by Swift & Company, of your own knowledge did they make any improvements?

A. They did.

Q. To what extent; that is, were they great improvements; great improvements in the plant and the facilities?

A. Yes, sir, there was a very marked improvement, and a very marked increase in the number of persons employed to take care of it.

1662 Q. And the facilities for handling the live stock?

A. Yes, sir.

Q. In this section, I mean, here at this plant, they were greatly increased?

A. Yes, sir.

Q. Now I will ask you this question; from your observation and your knowledge of conditions after Swift & Company purchased the plant, was there any tendency to suppress competition in the buying and selling of live stock or even the finished product; was there any suppression of competition?

A. No.

Q. Or on the other hand, did it make competition keener after Swift & Company took it over?

A. So far as my knowledge goes it gave impetus, for instance, I could probably site an instance, I remember that

after they had taken over the plant a Kansas City, I believe a Kansas City concern had their buyer here for the whole winter and fall season and kept hogs on the road between here and Opp, coralled there, that is, he kept them there and shipped them at his leisure; in other words, after it was advertised that they had brought their methods into the hog and cattle business here it served as an impetus to bring in more buyers.

Q. It served as an impetus to bring in more buyers?

A. Yes, sir.

Q. And has that been the history of conditions since
1663 Swift & Company obtained control of the plant?

A. Absolutely, and the sales have been increased in the various county sites around, they had sales, which was something we never heard of prior to their coming here and establishing markets for hogs and cattle all over the section. And the buyers came here, and have been attracted here, and it has improved cattle and hog conditions in the quality also.

Q. Mr. Dugger, this section of the country, in its development is really in its infancy, is it not?

A. I should think so. It is more husky then it was when I came here, but it is still in its infancy, so far as its development is concerned.

Q. The territory covered by the timber and after the timber has been gradually removed, that land is being put into a state of cultivation?

A. It is.

Q. What would you say as to the probably length of time it will take for this country to really develop into a stock raising country; what length of time would you say?

A. Well, that would depend upon conditions; conditions being normal, or if the present conditions are permitted to obtain, and we get our from under this era of depression, and then take up the gait we had been going for the past five years, I should think in a few years more, or a decade perhaps,
this country would show a development two or three
1664 times as great as it is at the present time.

Q. Now, in your judgment, will it do that if the plant should cease its operation?

A. I could conceive of nothing that would be a greater drawback to this whole section, than the putting out of commission of the Andalusia Packing Company, for the reason, that in my judgment, nothing has ever happened to this sec-

tion, which gave to the people confidence in this section, and in the future, as the coming to this section of Swift & Company, for the reason that the average man in all this section has regarded that as a corporation that was managed by shrewd business men who make decisions only after thorough investigation, and that they would not have considered coming here, had it not been for the fact that they saw in this section a potential development that exceeded that of any other undeveloped section. Now, not only the direct effect that their coming had, and in fact they have given a wonderful impetus to hog and cattle industry; but the confidence that their coming has inspired was such as to give this section a new impetus. Now then the dismantling and putting out of business of the packing plant and their withdrawing from this section would not only result in discouragement to every person in the live stock industry, but it would also dishearten the people in other lines of business development, and in my judgment it would be a blow, as I said, equal to the worse panic which could come over a section.

1665 Q. Mr. Dugger, Swift & Company has had this plant how long?

A. I believe—let's see, 1917. My recollection is they have had it since 1917. Isn't that right?

Q. About four years?

A. About four years, yes.

Q. Well, with their experience in the operation of this plant and their familiarity with this section of the country, on account of that four years of experience, in your judgment could any other packer, or any other association of people operate the plant with as much benefit to the general public in your judgment as could Swift & Company, on account of this experience?

A. Oh, certainly not. That would be out of the question. They would have to learn it; take it and learn what these people already know; that is, regarding local conditions, and handling the people, and all like that, as you have to learn the territory.

Q. I will ask you this; since Swift & Company has had control of this plant, whether or not they have carried on an educational campaign informing the farmers as to the development of the live stock industry, throughout this section of the country?

A. They certainly have.

Q. Have they an experiment station at their plant?
A. Yes, an experimental farm.
Q. Issuing their bulletins and encouraging this in-
1666 dustry throughout the entire section of the country?
A. Not only that, but at every public meeting in the whole of South Alabama, in the whole South Alabama section, wherever an opportunity presents itself, some representative would be there to explain to them about these things that they had found out with regard to the production of hogs and cattle, for this section.
Q. All right. If Swift & Company had to dispose of their stock what would be the result in your judgment, the stock of this plant, what would be your judgment as a business man, and a man acquainted with conditions here?
A. I think my judgment would be the judgment of every other business man in this section, and that would be that if that plant is ever operated, it would be operated by Swift & Company, and if they are turned out it would mean the denuding of the plant. I don't think anybody else could take it.
Mr. Prestwood: All right.

Cross-Examination by Mr. Taylor.

Q. I want to se if I understand you correctly, that the chief benefit of this industry coming to this community, through the purchase of the stock of this plant by Swift & Company, is by reason of the stabliizing or increasing, or whatever it may be, of the selling of hogs of the farmers throughout this community and the furnishing of a
1667 ready market for them; is that what you testify?
A. Repeat the question, please.
Mr. Taylor: Read the question.
(The question read by the reporter.)
A. Yes.
Q. Now, this great benefit you have described in such glowing terms represents in your mind, how much increase in the slaughtering of hogs in this community over the amount previously slaughtered by the old Andalusia Packing Company, when the stock was owned by the citizens of Andalusia?
A. My statement in the case was in no sense based upon the number of hogs slaughtered at any particular time, by Swift & Company, but upon the knowledge that the coming

of Swift & Company increased the purchase by the local plant of hogs and cattle, and also increased the production in this territory of hogs and cattle, some of which were sold to other concerns.

Q. Now just how much of an increase in the purchase and slaughter by Swift & Company do you have in your mind, or did you have in your mind as a basis of these unreserved statements as to the benefit of its coming to this community?

A. That statement was based upon the statement to me by Dr. J. P. Wilson, which was made prior to the perfecting of this complaint on the part of the Federal Trade Commission.

Q. I did not ask you where you got the information from but I asked you what was the increase you had in mind
1668 when you made your statement?

A. I am telling you his statement to me was that his investigation showed that the hog census of Covington county prior to the establishment of the packing plant was thirty thousand hogs whereas, the hog census in 1918 at the conclusion of a little more than a year and a quarter of the operation of Swift & Company showed ninety thousand hogs. That was the basis for the remark I made.

Q. During about half the time that plant was operated by the citizens themselves, was it not?

A. Yes, sir.

Q. Mr. Dugger, does the Chamber of Commerce keep records of its members?

A. Yes, sir.

Q. And who the members are?

A. Yes, sir.

Q. Mr. Dugger, where did you get the market prices you published in the paper from time to time?

A. I got them from the office of Swift & Company usually by telephone, and confirmed later by letter written on the day the letter came up there.

Q. How often did you compare those prices with the Chicago prices?

A. As I stated I believe in my former testimony I did not make it a point to make a definite comparison each
1669 time but I would keep in touch with the markets and occasionally see how the markets here would compare with the markets elsewhere, because as an editor I felt that it was my duty to the people to keep in touch with what was going on.

Q. Where did you get the Chicago prices when you did make the comparison with the Chicago prices?

A. I got them possibly from one of my exchanges, maybe the Courier Journal or the Birmingham Age-Herald or the Montgomery Advertiser.

Q. Did you make a comparison with other markets?

A. Yes, I usually looked at the markets when I compared them, Kansas City, St. Louis and Chicago.

Q. As a matter of fact Swift & Company has moved its selling department from Andalusia, has it not?

A. It has.

Q. How long ago did that happen?

A. I suppose two months ago, or something like that, I believe it was early in May.

Q. Now, haven't you heard of considerable dissatisfaction expressed here in Andalusia since that removal?

A. I have heard a few people speak of it.

Q. You have heard quite a number have you not?

A. To be specific, I have heard three.

Q. In fact, Mr. Dugger, you carried an article in your paper on that subject, did you not?

1670 A. I did, and that matter complained of was immediately remedied.

Q. To what do you now refer?

A. I refer to the fact that goods manufactured in Andalusia should not be shipped to Montgomery and shipped to the customers in Andalusia, but that the goods which were manufactured in Andalusia, at the plant in Andalusia, should be delivered to the customers in Andalusia, and that was immediately remedied, or complied with.

Q. In what way were those deliveries made before the removal of the selling department to Montgomery?

A. Before the selling department was moved to Montgomery they were delivered by truck, Swift & Company's truck.

Q. When? Whenever the customer wanted it?

A. I presume so.

Q. And how are they made now?

A. By the customer going after them.

Q. When?

A. When he desires, I presume. I am not positive now as to that. That is my understanding but I am not sure whether there is a restriction on that or not, I am not positive and don't undertake to say.

Q. Now, this selling department employed quite a number of men did it not?

A. A few men, yes, I don't know how many.

1671 Q. In fact the old Andalusia Packing Company when the stock was owned by the Andalusia residents, employed quite a number of men in the selling department, did it not?

A. Yes sir.

Q. And the removal of the selling department from Andalusia to Montgomery has taken away the men connected with the selling department, has it not?

A. Yes. May I explain.

Q. Yes?

A. Under the old Andalusia Packing Company operation, the greatest amount employed, according to my understanding, was about eighty people in the whole operation, and Swift & Company increased it to a maximum of four hundred, and still after the dismantling,—not dismantling, but the removal of the sales department, they have two or three times the number as the other people had; at least double that number.

Q. And the removal of the selling department has also taken a good deal of money out of the banks, has it not, the accounts that Swift & Company formerly carried here have now gone elsewhere?

A. I am afraid that is true, yes.

Mr. Taylor: That is all.

Redirect Examination by Mr. Albritton.

Q. Mr. Dugger, I will ask you if you in your testi-

1672 mony had at heart the interest of any bank, or any individual, in Andalusia, or whether your interest is in the section, and the public generally of the section served by the plant of Swift & Company?

A. I certainly have no other interest than that of a citizen of this section, and with Swift & Company I do not have any connection whatever and they did not have any connection with the Andalusia Star or the Opp Messenger and I have no interest in a bank beyond what I have on deposit.

Q. I will also ask you further if the removal, if there was a removal of the deposits of Swift & Company, resulting from the change of the selling force to Montgomery, has any bearing whatever on the benefit to the community of having Swift & Company's operations here?

R. Well, in a larger sense, no. In a restricted sense it would have; you remove any portion of a payroll from a community, and it affects it that much, but in a large sense of having the packing plant here, it would not.

Q. I will ask you this question: if from your observation of Swift & Company's operation of the plant since it was acquired the result has in any way been to suppress competition in buying and selling live stock, including hogs and cattle, and in the sale of the finished product?

A. I think not. I think I have answered it, in the former testimony which I gave.

1673 Q. I will ask you whether or not on the other hand, if as a matter of fact that the operation has not resulted in a keenly enlivened competition in this section?

A. I think it has. I am certain it has as I have stated.

Mr. Albritton: That is all, sir.

Recross Examination by Mr. Taylor.

Q. Mr. Dugger, what do you mean by competition?

A. Well, I did not know it had but one meaning. Two men trying to get the same thing.

Q. Who did Swift & Company bring in here to buy cattle and hogs for other people?

A. I never alleged that they brought anybody.

Q. Do you know of their bringing anybody here, directly or indirectly or any other way, competing with themselves?

A. I never intended to imply that.

Q. Do you know of anybody that they brought in here or who came in because they were here, and competed with them in selling their meats?

A. I did not intend to imply that.

Q. You did not?

A. No.

By Mr. Albritton: Q. You know they have been here and that competition has been greatly enlivened?

1674 By Mr. Taylor: Q. Who came who was not here before Swift & Company came?

A. I stated that I could not tell you the names of the men. There was a man here from Kansas City. I know of a number of hog sales corporations, that have organized local hog sales in the various counties, at Opp and Greenville and Ozark, and different places, the hog sales have been organized and carried on through the hog selling period.

Q. Now, weren't those hog sales carried on during the old days when the old Andalusia Packing Company was running and was run by Andalusia people?

A. I never heard of one.

Q. Do you say that they were not conducted at that time?

A. To the best of my knowledge I will say there was not any, and I believe that I would have heard of them. I am a pretty live wire.

Q. Now, what did Swift & Company have to do with those sales?

A. Where?

Q. At Opp and Greenville and Ozark?

A. Sometimes had a buyer there and sometimes did not; if they wanted to bid they could bid on them.

Q. Well, were you ever at one of those sales?

A. I was not.

Q. When were the sales as an institution established at Opp?

A. Well, I cannot say definitely when it was. I know
1675 I printed some blanks for them at different times. I cannot say when it was exactly.

Q. How about Greenville? Could you fix the date when the sales as an institution were established there?

A. It has been in the last year or so, or year and a half or two years, I expect. Most of the sales were given publicity in the daily papers.

Q. Your knowledge of them comes from the publicity or information you obtained from reading the papers?

A. Yes, sir.

Q. When were the sales as an institution established at Ozark?

A. Within the same limits.

Q. Does your knowledge with regard to them come from the same source?

A. The same source.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused, if that is all?

Mr. Prestwood: Yes, sir.

(Thereupon the witness was excused.)

A. C. DARLING was thereupon called as a witness, and being duly sworn, testified as follows:

By Mr. Prestwood.

Q. What is your name?
A. A. C. Darling.
1676 Q. What is your business? First, where do you live?
A. Here at Andalusia.
Q. What is your business?
A. I am primarily a wholesale grocer.
Q. Primarily a wholesale grocer?
A. Yes, sir.
Q. And what other business connections have you?
A. Well, I am in,—or rather, own a good deal of turpentine interests, and am an officer in one bank and own an interest in seventy-five thousand acres of land around here.
Q. In what states are those interests located?
A. In Alabama and in Florida.
Q. In Alabama and Florida?
A. Yes, sir, principally.
Q. And have you got any in Mississippi and Georgia?
A. Yes, I have got some in Mississippi and Georgia.
Q. Most of it in Alabama and Florida?
A. Yes, sir.
Q. How long have you been in the wholesale grocery business?
A. About fourteen years.
Q. Fourteen years?
A. Yes, sir.
Q. Now, Mr. Darling, you were one of the stockholders of the Andalusia Packing Company, were you?
A. Yes.
1677 Q. From its beginning up until the time they sold out to Swift & Company?
A. Yes, sir.
Q. Now, you also were one of the chief promoters of the packing company when it was established, were you not?
A. Well, I was one of the promoters.
Q. Will you just give us a little brief history of the establishment of the Andalusia Packing Company and the reasons for it and so on?
A. Well, the reason was that in 1915 our farmers realized

that they could not raise cotton, and a few of us at first thought if we could establish a packing plant and create a market for hogs we could induce the people to raise hogs and land values would increase and the farming industry would revive, and in fact, our whole country be very much improved. Six or seven at first discussed it, and then we got so enthused among ourselves, and then we succeeded in getting everybody in the whole country interested in it, and we sold the stock and we had one hundred and ninety-nine stockholders I believe it was, and nobody had much, but everybody had a little. At that time there was not any market here for hogs at all. We didn't know anything really about the business, but we started up and Henderson was elected President and I was Secretary and Treasurer and we ran the thing about eighteen months, and we could hear occasionally of Swift & Company moving around
1678 through the country and some fellow would tell us that he was here, and then yonder, and we were hoping that he would come around, and finally he did come and make us an offer, and we wanted a little more, but we did not let him get away, we sold to him, and we sold to him for the reason that we did not have the money to buy the hogs. Mr. Henderson and I put our names in personal endorsements on paper for three hundred and sixty thousand dollars of money at one time, and we knew that we would not do it after the first year. We were the two instigators, of it, and we were supposed to run it, and we took too much chance, and when we got a chance to sell at a profit, to people who knew the business, we did not lose any time, but let them have it. We had more hogs offered to us the second year than we could ever buy. We did not have the capacity to kill them as they came in. We did not have room enough to take care of them, and we did not know how to take care of them, and we were not capable to run a packing business because we did not know anything about it.

Q. How much stock did you have in that company?

A. My concern had five thousand dollars worth and I had individually fifteen hundred dollars worth, and my net earnings was—my holdings was about five thousand, and to protect that little five thousand I had my name on three hundred and sixty thousand dollars worth of paper at one time.

Q. And of course that necessarily affected your credit, your commercial credit?

1679 A. Yes, we knew if we could get through with this one year's operation—and we were determined to carry it through—we didn't have any trouble about getting the money, because all of the banks in the whole country and individuals too offered us all of the money we wanted, but Henderson and I knew that we were not going to do this same thing the second year, so when we could get an offer to sell, we got all of the principal stockholders together, and we explained the situation to them, and most of the folks didn't like it at first, but when I told them about the burden we were carrying for them without their knowledge, they all acquiesced in the sale of the stock as we desired.

Q. The great majority of the stockholders were men of small means, were they not?

A. Yes, sir, a great many of the men had just one share of fifty dollars.

Q. And the burden fell upon two or three to finance the whole proposition and they had to do that individually?

A. Well, no, we didn't do it individually, except through our endorsement. The banks would offer us money with Henderson's and my endorsement, but we had charge of this affair and we could not tell these people that we would not endorse the paper.

Q. Now, Mr. Darling, at the time you all operated this plant did Swift & Company or any other packers during the time that you operated it, use any unfair means with you in competition to try to drive you out?

A. Well, if they did we did not know it.

1680 Q. You did not know it?

A. We sold a part of our pigs and small hogs that could not be cut up into meat to Swift & Company, and we sold dry salt meat and hams, I know, to Cudahy and Wilson and other packers.

Q. Were they your best buyers?

A. It paid better to sell to the packers than it did to pay the commissions with the refrigerator people of their own in the cities. Do you understand, we had to pay a commission in the cities, and after the commission was paid, it paid us better to sell direct to the packers, who had a selling or-organization, and we did not. We sold the home folk, but this immediate section could not use a very big percentage of the meat we had.

Q. And you sold a good deal of meat through your wholesale grocery business, did you not?

A. My organization sold all the meat in that territory, practically, for the packing company.

Q. What was the purpose, Mr. Darling, of the organization of this packing company? Was it to go into competition in the packing business, or was it to create a live stock industry and to create markets for it along the lines that you spoke of?

A. It was simply to create a market for live stock in this country. We did not go into it to make money especially, but we went into the business to create a market for our customers. I say our customers, our bank customers and my customers, and my customers' customers, and to help
1681 make this whole country prosperous. I do not mean to say that we did not expect a benefit from it, because we did.

Q. Do I judge from what you say and from what you have said there with reference to the sales of the product that as a matter of fact you were not in competition with Swift & Company, and Wilson and Armour and those fellows?

A. Sure; we were in competition with everybody selling meat.

Q. But I understand that they were your principal buyers?

A. Sure.

Q. For your finished products?

A. They were our principal buyers, and yet we were in competition with them too. Locally we were in competition with them. But we were dependent upon them to distribute it outside of our territory.

Q. The majority of your stuff?

A. Yes sir.

Q. You did not sell locally?

A. We did sell the majority of it to the packers, but I don't know whether more to one packer than another. I don't know to which packer we sold the most of our product.

Q. You were closely connected with the plant during its entire operation as the Andalusia Packing Company?

A. Yes sir, I was secretary and treasurer.

Q. You were secretary and treasurer?

A. Yes sir.

1682 Q. Do you know of a single instance, or can you tell the court of a single instance, where Swift & Company

did anything or used any methods in any way to force you all to sell?

A. The best illustration that I could give you of that is that this State bought a good deal of meat to feed its convicts, and very nearly every time we bid on the State's supplies, we got its business, in competition with Swift & Company, Armour, Cudahy and Wilson.

Q. I understand, but do you know of any instance where Swift & Company performed any unfair act against the Andalusia Packing Company just prior to the sale to them?

A. No.

Q. Endeavoring to force you to sell to them?

A. No, I don't know of any undue advantage that they took of us.

Q. Now, the entire stockholders holding the stock of the Andalusia Packing Company, after they understood the condition of affairs, were they willing to sell or not?

A. Everybody was except one man.

Q. Well, the great majority?

A. One man did not want to sell, but he did not own but one share of fifty dollars, and we got a man to tell him that he could not stop this sale, that we were going to sell the physical assets if he didn't let us sell the stock, and we got his one share, and that is the only one that I know of.

1683 Q. I will ask you as a matter of fact if the selling of the stock, when you were in the negotiation for this sale or transfer, if the selling of the stock was not to expedite the selling of it instead of the physical assets?

A. Now, I don't know. We wanted to do what they wanted to do. We wanted to sell; and if they had said they wanted to buy the physical assets, we would have done that; but the record will show. I don't think we sold this thing to Swift & Company; I think Swift & Company bought from the folks we bought from, but I am not sure about that, and the records would show that. I run my business, and Henderson run the packing plant. I was secretary and treasurer, and that kept me informed as to the things they were doing, but as to the details I had nothing to do with that.

Q. Now, I will ask you this question. Since selling to Swift & Company, has competition in the live stock industry been greatly suppressed or suppressed in any way in this section of the country?

A. Well, you know after Swift & Company bought this plant and everybody was sure there was going to be people

here who would buy what was offered, a great many more hogs were raised than prior to that time, and other buyers have come here to buy hogs and cattle, more than came here before, because there was none here to buy before. I can't say anything about Swift & Company bringing them here, I guess they did not; but they came like anybody who
1684 wants to buy anything goes to where it is to get it, and I have never heard of them doing anything to suppress competition.

Q. And as a matter of fact the result has been that it has created more competition for the reason that more stock has been raised?

A. More stock has been raised than when we had it, because the people realized that they could sell it.

Q. In the selling of the finished product I will ask you about that, if they have suppressed competition along that line that you know of?

A. No sir.

Q. I will ask if all the packers are not in here and have been ever since Swift & Company owned it, selling products?

A. You ask somebody that comes in contact with it, but I can't say; I presume that is so.

Q. You don't know of your own knowledge?

A. No, I don't know of my own knowledge. They do not solicit me; I do not handle meats.

Q. You do not handle meats?

A. No.

Q. Mr. Darling, what is your opinion from the general public in this section of the country as to whether or not they have been satisfied and glad that Swift & Company took over the plant, and increased its facilities and so on, what is your information along that line?

1685 A. Well, my common information, Mr. Prestwood, is that everybody knows that Swift & Company has increased the capacity of his plant, and that alone would make him more anxious to have enough raw stuff to run it; and everybody that I have heard speak of it is almost as proud of Swift & Company's improvement of his plant as if it had been our own.

Q. Now, do you know, Mr. Darling, since increasing the size of this plant and the facilities down here, whether there is sufficient hogs raised in this country to keep the plant going the year around?

A. No, there are sufficient hogs raised to keep the plant

running three or possibly four months, and in the five or seven or more months this immediate territory does not supply enough hogs to keep them anything like busy.

Q. Do you know whether or not on that account they run at a loss?

A. I can't say as to what that is or their output, I don't know anything about that, about their affairs.

Q. Well, I will ask you in your judgment about how long do you think it will take if Swift & Company is let alone, to develop this territory in the live stock business so that this plant could run twelve months of the year to its capacity?

A. Well, it would be dependent upon, of course, largely, on Swift & Company themselves. As organized right now,
within five or six years Swift & Company ought to gain
1686 sufficient and expert enough information to satisfy the
people that it would pay them to raise hogs and to feed them and to have them as they want them.

Q. Then you would say in five or six years?

A. I would say in five or six years.

Q. As presently organized?

A. Yes, as presently organized.

Q. And would you say that on account of their experience in this section of the country that they are better equipped and adapted for the promotion of this industry than any one else here?

A. Yes, and let me explain that. In so far as the selling arrangement and organization, I suppose other packers have as good facilities as they; but on account of the personal relations in this immediate territory, I think they could do better than anybody else.

Q. On account of their contract with this territory for four years?

A. Sure, yes.

Q. Now, Mr. Darling, do you believe it would be possible to secure a purchaser for this plant?

A. Oh, I can't say about that.

Q. If it was ordered sold or the stock?

A. I cannot form an idea about that.

Q. Well, you have got some judgment as to the local conditions?

1687 A. Oh, sell it locally, you mean, to some individuals around here?

Q. Yes.

A. No.

Q. Could not do it?
A. I don't think so.
Q. If it was sold in any way, the stock, if the stock is disposed of, who would have to buy, if anybody bought?
A. Some packer or some man who knew his business would have to buy it.
Q. Some other large packer?
A. Sure.
Q. They, of course, have spent lots of money increasing the capacity of the plant, haven't they?
A. Their records show that, you know.
Q. What would you say?
A. Yes, it is obvious that they have spent a whole lot of money.
Q. You have seen what was done since you let it go?
A. Yes sir.
Q. And you don't know how much?
A. No sir.
Q. But you know it has been increased, anybody can see by looking at it?
A. They have doubled the cooling space, I think, since we had it, and they have increased the yards and made various improvements there.
1688 Q. Since they purchased it from the Andalusia Packing Company?
A. Sure, yes.
Q. Now, what is your judgment of the result if this plant was disposed of or shut down or ceased operation, what result would that have on this country?
A. Why, it would be one of the most disastrous things that we could have to happen to it. Ninety per cent of the farmers in this surrounding territory have built pastures and cross-fences and arranged to sell hogs; and with this plant running, they can sell one or a carload; and if this was gone, I do not mean to say that you could not sell hogs now, because we could ship hogs to some place else, but some small man would have to come in and buy here and yonder, and he would have to buy so much cheaper and take the chances, that I think that this country would be hurt badly if this plant was to be shut down or moved.
Q. Well now, how much territory in your judgment would that affect, how much of the surrounding territory?
A. Mr. Prestwood, I can't answer it because it would be psychological, and the thing might go two hundred miles, it

might extend into Georgia, and it might go into Mississippi, and the Carolinas, there is no telling.

Q. Just in your judgment as to the conditions surrounding this plant and all, in this territory, and from your acquaintance with this territory and the zone of opera-
1689 tion of this plant, what territory do you think would be affected?

A. I think they draw hogs in a radius of a hundred miles around here, and it would affect that much I am quite sure.

Q. That is a radius of a hundred miles every way?

A. Yes sir.

Q. And that would take in West Florida?

A. Yes; practically the whole of it.

Q. And practically the whole of West Florida?

A. Yes sir.

Q. And Southeast Alabama?

A. Yes sir, the whole of South Alabama.

Q. Now, Mr. Darling, I will ask you if you know whether Swift & Company since its acquisition of this plant has carried on any campaign of education and information to the people throughout this territory on the stock industry?

A. Yes; the Chamber of Commerce, which is purely a business organization, has one of its best helps in getting anything good before the farmers in Swift & Company's men; we get cooperation with them in boosting the town or anything that we want to do to try to improve the whole country.

Q. I will ask you this. Since their operation of this plant has a better grade of hogs and cattle been brought in and developed?

A. Yes, both cattle and hogs.

Q. Both cattle and hogs?

1690 A. Sure; they had a little demonstration out here, you know, at our fair as to the differences in the grade of cattle and hogs and the feed and the practical demonstration of it, which showed you how and let you see, and they carry it everywhere they go.

Q. That was Swift & Company?

A. Yes sir.

Q. And they carry on an experiment station out here at their plant?

A. I have been told so, but I don't know about that; I have not been in it.

Q. Well, you saw evidences at the fair?

A. Yes, I saw evidences of it at the fair.

Q. At the Covington County fair?

A. Yes, and I have been told that they visit all the fairs around with the same cooperative spirit that they give us.

Q. I will ask you, Mr. Darling, from your experience and observation of the conduct of Swift & Company since they had charge of this plant, whether or not it has been one of cooperation or suppression; which has it been?

A. We people of Andalusia have found them as cooperative as any other citizens here in any measure or in anything that we attempted to do, and we count on Swift & Company's help as we would any bank or merchant or any other citizen, and we get it.

Q. Not only in agricultural development, but in civic development?

1691 A. Anything for the good of the town or the section.

Q. Of this section?

A. Yes sir.

Mr. Prestwood: I believe that is all, Mr. Taylor.

Cross-Examination by Mr. Taylor.

Q. Mr. Darling, as I remember Mr. Prestwood's question to you sometime ago it was that if the plant should be disposed of and shut down, what would be the result. Now, I would like to have your version of the other side of the question. Suppose it was disposed of and not shut down, what would be the result?

A. Well, that would depend entirely on the attitude of the owner; I can't say what the result would be.

Q. Is it a fair assumption that any man who would put money into it necessary to buy it would do it for the purpose of operating it to the best interest of himself and the community?

A. That is a fair assumption, but it is not always done.

Q. That was what the former stockholders did, wasn't it, while Mr. Henderson was there, yourself and Mr. Henderson and a hundred and ninety-seven others to whom you referred?

A. Yes.

Q. And as you said, you were all green in that business?

A. No, I said if it was shut down. I mean if it was stopped or closed.

Q. That is exactly what I am bringing out. You
1692 meant if it was closed up?

A. Sure.

Q. Let us assume that it is not closed up, but simply bought. There is plenty of money here to buy it. This is a rich community, is it not?

A. No sir, there is not plenty of money here to buy it.

Q. Is this a rich community?

A. No sir.

Q. You certainly would not say it was a poor community? I have not been here but a short time, but I have seen so many evidences of wealth?

A. We have been a great deal better off here than we are now.

Q. That is the way with everybody over the United States, is it not?

A. Well, I hope the balance of the United States is not quite as badly hit as this particular community.

Q. Mr. Darling, this plant was sold to Swift & Company after they had come down here and gone over your inventories and checked over every article and gone over the entire plant and knew exactly what they were getting, wasn't it?

A. I can't say yes or no to that; I presume that is the way it was done; I presume anybody would know exactly what they were getting.

Q. It is your recollection that Swift & Company got full value for the money they paid for this stock?

1693 A. Yes sir.

Q. And all of these stockholders bought it at par, didn't they?

A. Every man got it at par.

Q. And sold it at a hundred and forty after one year's operation?

A. A little more than a year.

Q. More than a year of actual operation, it was sold the 24th of July, 1917?

A. Well, I don't know exactly, but I think we operated in 1916 and a part of 1917.

Q. Yes, you did.

A. Yes sir.

Q. From about June 1916 up to July 24, 1917, is about the period?

A. Yes sir; and I think we made money in it like any-

thing, you know our product advanced and advanced and advanced and advanced and kept on advancing, and that was our salvation.

Q. It advanced more after Swift & Company bought it than it did before, didn't it?

A. Well, we had not reached the peak of the high prices, and it did advance more afterwards; that is true.

Q. And it was not reached, as a matter of fact, until about three years afterwards, was it?

A. I say that was our salvation, that advancing.

Q. The price of meats continued to advance about three years after the stock was sold, didn't it?

1694 A. I think so, yes.

Q. Now, Mr. Darling, do you remember that you had a broker up at Atlanta by the name of Miller who operated under the name of J. W. Clark & Company?

A. I can't say as to the identity of any broker, because I paid very little attention to the selling arrangement; that was Mr. Henderson's affair.

Q. Do you recall a broker at Birmingham by the name of Allen?

A. Yes sir.

Q. You do not recall how much the broker at Atlanta got?

A. No.

Q. And you do not recall about how much Mr. Allen got?

A. I am of the opinion that we gave Allen five per cent.

Q. I don't mean commission.

A. No, I don't know anything about that.

Q. Is the same situation so in regard to the meat sold to the various packers?

A. I was just told—

Q. Arent's you hazy in your mind about just how much was sold?

A. I remember at one time we had quite a lot of shoulders, and had not been able to sell them to anybody, and no demand in our immediate territory, and Henderson says "There is six carloads of shoulders" and I got them off on Cudahy, and he says it was the best sale we ever made; I remember that.

Q. That is a single sale?

1695 A. Yes sir.

Q. The best sale or the best single sale?

A. The best single sale, it was the best individual sale he made.

Q. Do you remember any other meats sold to the packers?

A. I remember shipping a good many carloads of pigs and whole hogs, and I asked where the hogs were going to, and he said Swift & Company; I think Swift & Company bought most of our uncured meat.

Q. So you would not want to have it appear that your recollection on that is more accurate than the records on that?

A. No, no; I don't know; I would let the records take precedence over anything that I might say as far as the sales are concerned.

Q. And so far as you recall either Mr. Miller or Mr. Allen may have sold a good deal more meat than you sold to the packers?

A. That may have been so.

Q. Mr. Darling, at the time you were doing business here, and that is, by you I mean the Andalusia Packing Company with the old stockholders, prior to July 24, 1917, the company was selling a good deal of meat in this community, I believe; you testified you handled a good deal of it yourself?

A. Yes sir.

Q. And Swift & Company were also selling here in this community in competition with you, I believe you also
1696 testified? Now then in testifying as to the elimination of competition, you said the purchase by Swift & Company of the stock did not eliminate competition. Is is not a fact that it eliminated the competition previously existing between the Andalusia Packing Company and Swift & Company?

A. I did not catch that.

Mr. Taylor: Read the question.

(Question read.)

A. That is true; there was no competition between us after we sold out. We were not in business, but I do say that we would not have been able to run our packing house another year without material help from some source; and whether we could have gotten it was problematical.

Mr. Taylor: That is all.

Redirect Examination by Mr. Prestwood.

Q. Please examine Respondent's Exhibit No. 23, Mr. Darling.

A. This is Swift & Company's exhibits.

Q. Now, assuming that the figures show losses here during 1918, 1920 and 1921, and assuming that those figures are true, and taking that in connection with the present condition and the present outlook, in your judgment would any going concern purchase this plant for anything around the actual investment?

A. Well, I would think if anybody bought this plant it would have been on what he could do, and not at all
1697 what Swift & Company could do. I would not count that worth anything.

A. No.

Mr. Prestwood: I believe that is all.

Examiner Sadler: Any further cross-examination?

Mr. Taylor: No.

Examiner Sadler: The witness will be excused.

(Witness excused.)

1698 The following witnesses testified to substantially the same effect as Witnesses Dugger, Darling, Wilson and Henderson (supra):

G. W. Rogers of Munson, Fla. foreman of the farming department of the Bagdad Land & Lumber Company, which company operated a farm of about five hundred acres and raised hogs and cattle (pp. 3811-3819.)

F. M. Fleming of Geneva, Geneva County, about 45 miles from Andalusia, was engaged in the live stock business generally—buying and selling hogs. (pp. 3820-3838)

Henry A. Hughes who lived at Florida, Alabama, was engaged in the business of farming and stock raising, was owner of about five or six thousand sheep, and was a dealer in live stock; also was a stockholder in the old Andalusia Packing Co. (pp. 3839-3848)

J. M. Pilcher who lived at Florala, Alabama, was County Commissioner, also a general merchant and farmer, and had been in the mercantile business in that section for the past twenty years. (pp. 3849-3868)

J. T. Clark who lived at Red Level, Alabama, twelve miles from Andalusia, was a merchant and farmer in that section for the past sixteen years, and also a stockholder in the old Andalusia Packing Company. (pp. 3868-3878)

R. E. Lee who lived at Red Level, Alabama and was a farmer in that section for the past fourteen years. (pp. 3879-3886)

I. S. Wright who lived at Opp, Alabama, fifteen miles

from Andalusia and was a live stock dealer for the past ten or twelve years. (pp. 3886-3896)

1699 Aaron Whaley, Jr., who lived at Opp, Alabama, was a banker interested in the live stock industry and the development of the country generally, and practically had lived in that section of the country all his life. (pp. 3896-3903)

J. T. Bradshaw who lived at Andalusia, Alabama since 1883, was engaged in the mercantile business there since 1907, and was also a stockholder in the old Andalusia Packing Company. (pp. 3904-3922)

Judge J. M. Robinson who had been Judge of the Probate Court of Covington County, an elective office, for the past twenty-five years and was one of the stockholders of the old Andalusia Packing Co. (pp. 3922-3930)

J. E. Wright who had lived in Andalusia for the past four years and previous to that time at River Falls, Alabama, about four miles away, who resided in River Falls since 1907, was engaged in the business of farming, merchantile, pickle and brick manufacturing, was an officer of the Consolidated Brick Company, which company was a stockholder in the old Andalusia Packing Company. (pp. 3930-3947)

J. L. Knox who had lived in Andalusia for he past twenty-two years, was engaged in the mercantile business and was one of the stockholders and promoters of the old Andalusia Packing Company. (pp. 3988-3997)

A. F. Morrill who lived at Dozier in Crenshaw County, Alabama, about fifteen miles from Andalusia, was a

1700 farmer and merchant for the past twenty-two years, also a dealer in live stock, and a stockholder and one of the promoters of the old Andalusia Packing Company. (pp. 3997-4005)

S. B. Millingan, Vice-President of the Bank of Andalusia who has lived in Andalusia for the past seventeen years, was a banker and farmer, also a stockholder and one of the promoters of the old Andalusia Packing Co. (pp. 4005-4009)

Col. Allen Crenshaw who lived in Andalusia for the past sixteen years, is a lawyer and real estate man, is President of the Rotary Club, a semi-business and social organization, having for its object anything that is for the good of the community and the betterment of conditions. The Rotary Club has twenty-five members in Andalusia, and its membership consists of representative business men of the town, one from each business or profession. Mr. Crenshaw had

been in the regular Army in the late war with Germany and had the rank of Colonel. Mr. Crenshaw was certain that he expressed the unanimous sentiment of every member of the Rotary Club, and that that organization desired Swift & Company to continue to run the packing plant. (pp. 4009-4113)

Judge A. L. Rankin who lived in Andalusia, Alabama for the past twenty-one years, is a lawyer and also a farmer with several farms, also is President of the Kiwanis Club. The Kiwanis Club was an organization composed of business men of Andalusia, there being two men from each line of business. Judge Rankin was sure that it would be the
1701 opinion of every member of the Kiwanis Club that it would be a great calamity if Swift & Company were forced to do away with the packing company as in his opinion they were in a better position to operate a plant and carry on the development than any other packer would be. (pp. 4013-4017)

1702 J. P. WILSON, was thereupon called as a witness, and being duly sworn, testified as follows:

Direct Examination by Mr. Prestwood.

Q. What is your name?
A. J. P. Wilson.
Q. Where do you live, Mr. Wilson?
A. At Andalusia.
Q. How long have you been living here?
A. Since January, 1916.
Q. What position do you hold in this county?
A. County Farm Demonstration Agent.
Q. How long have you held that position?
A. Since I have been here.
Q. Since January 1st, 1916?
A. Yes, sir.
Q. What are some of your duties?
A. Well, my duties are varied; from an educational standpoint we are supposed to work the best we can with the farmer, and we are to work with him through organization, and help him to sell his products, and to grow more and better products, and in a general way, that is supposed to be our duty; anything that has to do with the welfare of the farmer.

Q. Now, did you take any training for that work?

A. Yes, sir.

1703 Q. For this line of work?

A. Yes, sir.

Q. What training did you take?

A. I finished at the Alabama Polytechnic Institute in agriculture in 1915.

Q. In this particular line of work?

A. Yes, sir, in this particular line of work.

Q. Now, who are you employed by?

A. I am employed jointly by the county and state, and the Federal Government. Our contract is with the Federal Government. The work is known as co-operative extension work South, and paid by the state and county, and the Federal Government.

Q. Now, since you have been in this work,—since you have been in this work here, have you come in contact with the Andalusia Packing Company, while they ran the plant out here?

A. As far as it related to my work; yes, the same as I would with any other institution of the county; a bank, or a pickle plant, or anything else.

Q. At the time of the organization of the Andalusia Packing Company did we or not have any live stock markets in this section to amount to anything?

A. When I came in herein 1916 there was practically no market for live stock; I had cases of farmers coming to me lots of times asking about selling, and helping to sell their hogs, and things of that description. You might say
1704 there was practically no market, or very little, if any, in this section.

Q. Now, after the Andalusia Packing Company began to operate here, did that stimulate the hog industry?

A. Yes, it was stimulated, and it began to stimulate the hog industry from the time it started to building the plant here. The people went "hog wild." They got more hogs than they had feed for, and they knew nothing about raising hogs, and had never raised them in this section, other than a few for meat for their own use, and nothing like all of their meat was raised here then because they were putting all of their attention on cotton, and the farmers bought a great deal of their meat and a good deal of their meal.

Q. What was the character of the hogs at that time?

A. Most of them were what have been called "piney woods rooters."

Q. "Piney woods rooters"?

A. Yes, sir.

Q. What was the average weight of that class of hogs?

A. The average weight of a piney woods rooter was around one hundred pounds. Well, say an average or from ninety to one hundred and twenty-five pounds. We had worlds of those at the time I came here, but did not have but a very few good hogs. No good hogs to amount to anything; just a very few.

Q. Now, what is the real appearance of a "piney woods rooter"?

A. Well, he is an animal that if you pick him up by the ears he will practically balance, and if you kill him and
1705 dry him out you will get a quart of lard, as a fellow in Georgia said, and a bottle of turpentine. That is a pretty good answer or definition I think for a piney woods rooter.

Q. Now, after Swift & Company,—first, you know when they purchased this plant

A. Yes.

Q. What was done by Swift & Company in connection with development along the line of stimulating the live stock industry?

A. Do you want me to tell you everything they have done along that line of work?

Q. Yes, in a brief way?

A. One of the first things they did was this: before we did not have any hog pastures in this country, and I asked them to let us put on a little demonstration around their plant on some land they had, and the fixed it up to grow the different pasture crops, under my direction, and in co-operation with the head of the extension department at Auburn, and the crops were put out and they bought hogs and put them on it, and fixed it up, and fixed hog houses, and things like that, and breeding crates, and so on, where the farmers when they would come in to sell hogs, could go down there and look the proposition over. That is one thing they did. Another one was they helped us to get out literature, after we held a meeting at Dothan, and outlined a farming program for South Alabama, and at all times in all of their work, I was very much pleased, for one thing on
1706 account of the fact that they did not insist on hogs all the time, but in all of the campaigns that I asked them

to join with me in my work, they insisted on a balanced farming program and that a man should have a little cotton, and a few hogs, and good hogs, and raise them at a profit, to be sold during all the year; and then they put out some chickens with the home demonstration agents, I cannot say how many, but I know they must have put out several hundred pairs in this section, with the home demonstration agents, and they were given to the girls' poultry clubs, made them a present of these, and besides a good many chickens were sold to the people at cost, and in my work they furnished me with a pair of pure bred Poland China pigs, and also furnished the pig clubs in Troy and in perhaps some other places, and at the fair, another thing, so the club boys would afford to buy it, they cut the size of hog feed down to a twenty-five pound bag so they could afford to buy it and then they gave prizes at the fair, and they have always furnished me with men to go out with me at any time that I saw fit and assist me in any campaign work in this county, whether it pertained to hogs or to growing a better garden, or cotton, or hay, or anything or the kind. They had a demonstration department also back behind the plant, and we had a great crowd out there, and it made it possible for us to get the men from Dothan up here, and conduct a demonstration, and about three thousand people were fed out there that day, and they
helped us to get the crowd up to make it a success;
1707 then I would have club days in here, and they were al-
ways nice about showing them over the plant, and so in a general way, and in all kinds of ways they helped me in my work.

Q. You always found in them a ready helper in any line of improvement, agricultural improvement, in this section of the country?

A. They were always willing and ready, yes.

Q. Now, what have they done toward creating better grades of hogs?

A. Well, they have done a great deal of educational work, and then the demonstration they put on, with reference to having some hogs on the farm, and some peanuts on the farm, and all that sort of thing, they have been instrumental in helping a great deal, and also helped in the holding of hog sales, and have helped to make the fair a success, and get good hogs here. This year they put out pigs to the pig club boys, and organized pig clubs.

Q. You say you work with the farmer?

A. Yes, sir.

Q. And you assist him in every way you can to provide a market for his products?

A. Yes, sir.

Q. I will ask you what has been your experience in obtaining a market for live stock since Swift & Company has had charge of this plant, and before they got it did they buy them?

1708 A. This immediate territory, there has been a better market at this place, simply from the fact that we did not handle very many hogs, except—the Andalusia people, I speak of,—cattle, sheep, and goats, and things like that, and the selling of hogs, Southern hogs, has been practically the same,—except this, I notice the ratio between the Chicago prices and the prices locally, paid locally, have decreased considerably since Swift & Company took it over; about from five to about two cents.

Q. You mean, the spread?

A. I mean the spread.

Q. Between the Chicago prices or market and the Andalusia market, since Swift & Company has had it, has been around two cents?

A. It has decreased to that; yes.

Q. Under Chicago?

A. Yes, sir.

Q. Before that time it was something like three to five?

A. It has been that, yes, at the time it was started off.

Q. Now, I will ask you in your judgment, Mr. Wilson, if competition has been stimulated or diminished since Swift & Company has absorbed the plant, in the buying and selling of live stock?

A. It has been stimulated to a certain extent for this reason; a good many buyers have gone out in the market

1709 who were directly or indirectly connected with the Andalusia plant, from a financial standpoint, and Swift & Company took it over, and they went out and got on the open market and began to buy, and they are what are called "Scalpers." That is about the difference. We have shipped some hogs, of course in the last year or two to the Montgomery stockyards. Some hogs were shipped there.

Q. Do you know anything about the market there; is it an open market at the Montgomery stockyards?

A. That is an open market.

Q. And it is about ninety miles from here?

A. Yes, sir.

Q. Now, what do you know about the hog sales?

A. The hog sales is a product of our extension work, of the county department, of the different counties, and it was for the purpose of giving the farmers a market where they did not grow them in carload lots, the very thing we all had by having a packing plant at Andalusia, so that a farmer with one hog or a carload can come and sell any day of the year. These scalpers did not buy during the summer months but only in the heavy months, and the farmers could not sell them, because if they sold them to the scalpers, they would have to keep them so long, they would have to pay a low price or they would have to keep them so long and feed them that the profit would all be gone. The original of the hog
1710 sales association was to give the farmer a market every month in the year, if possible. Of course, at the same time, it was to eradicate speculation, or unjust speculation.

Q. Well, that served to concentrate the hogs and get them ready to ship to a packing plant?

A. Yes, the farmers would bring in the hogs and they were weighed and graded and either sold locally or they would ship them.

Q. And that has all been done, has it, Mr. Wilson, in this section of the country since Swift & Company took over this packing plant?

A. During that period, yes, sir.

Q. Since 1917?

A. Yes, there were no hog sales associations in this territory before that. In fact, the majority of the hogs began to be raised since that time.

Q. Mr. Wilson, what is your judgment,—you go among the people all the time, the farmers throughout this county, and the surrounding counties also some, do you not?

A. Yes, all this end of the state.

Q. What is your opinion as to the general sentiment of the people about Swift & Company having bought out this plant?

A. Well, the people all over this section were pleased when Swift & Company took it over, because they saw greater possibilities in it. As it started out, when it was the Anda-
lusia Packing Company it was a local proposition, but
1711 when Swift & Company took it over, it looked like a big proposition, with big possibilities to it.

Q. To develop a great territory around it?

A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. Now, in your judgment what would you say the result would be if this plant was closed for any reason?
A. It would curtail the production of live stock very much; it is hard to say how much, or whether it would be permanent, but it would curtail production to a great extent though.
Q. Would that be beneficial or detrimental to the farming interests of this entire section?
A. Detrimental, of course. The hogs have to be sold to make farming here profitable, and the farmer must get a part of his money each year from his hogs; that has been the thing that has been put in practice, and it is a theory which has been proven to be practicable, and the thing we are working for is to get each farm to have so many hogs to sell each year and to market them during the different months of the year, and to kill, and that has been a part of the educational campaign, to show the farmers, and to teach them how to cure all they need at home, and then to sell the surplus.
Q. Has Swift & Company assisted you in that?
A. Yes.
1712 Q. Now, what is the situation, Mr. Wilson, as to the farmer raising his own meat, and taking care of it, since Swift & Company has been in here as the packing house people?
A. There is a much larger percentage of the meat consumed by the farmers of the county who kill and cure now than there was at first.
Q. You mean, Mr. Wilson, of their own killing and curing?
A. Yes, sir, and that has been due to the educational work that has been sent out.
Q. Now, what in your judgment was the number of months supply that they used to put away compared with what they put away now for their own use?
A. That is a pretty hard question. It would be a question of guesswork. I would say at first it was four, and now it is nine.
Q. Four months?
A. Four months.
Q. And now nine months?
A. Now nine months, yes. That is the proportion.
Q. You are acquainted with the situation in this terri-

tory of course as to how the education has been carried on along live stock industry lines; how long, in your judgment will it take if this campaign goes on and Swift & Company is let alone for it to develop this territory to the extent that this plant can run to capacity twelve months of the year?

1713 A. Well, I would have to answer it—

Q. (interrupting) So there would be a reasonable supply of hogs to carry it on?

A. I believe in from three to five years we will have it where the plant can run profitably during the year, throughout the year, with the success we have had in the last year and a half. We are going back to hogs now, and we are going back to hogs on a sensible scale or on a sensible basis, and like the fellows in the corn belt, and in the hog sections, we are growing good hogs, and replacing the scrubs with good hogs, and in place of having four piney woods rooters that will weigh four hundred pounds, we are getting some good hogs where one will weight five hundred pounds, and are learning that the number has nothing to do with it, but that it is the pounds.

Q. Now, as a matter of common knowledge in this section of the country, hogs decreased in number here in the latter part of 1919 and in 1920, did they not?

A. Yes, sir.

Q. Well, there was some reason for that.

A. Yes, sir. You had the condition here at the beginning that you will probably always have in any section of the country where all the fellows want to go into a new undertaking and undertake to grow something for the market, some new product; they forgot that they had to feed those hogs, and the only thing that they were looking for was

1714 the number of hogs. We thought that if a man with a one-horse farm would get ten sows, and each sow have ten pigs each year and each pig weighed one hundred pounds apiece, and we got six cents a pound for them, we could just take a tablet and a pencil and figure it out so you would be a millionaire in a little while, and we forgot that they must be fed, and we forgot that we had to have good hogs, and forgot that good hogs made more money from a bushel of corn than poor hogs. Now after they had been in the hog game for a year or two, and if there had not been any drop, in normal times, there would have been a decrease, because

farmers go away from things, and then come back to them. It was natural to drift away, and that is one reason for it. But we had abnormal times though, and abnormal prices which effected a decrease in the hogs in the United States, and we had corn selling for two and two and a half a bushel, and at one time the price of hogs was very high, and those things tended in that direction, and that was another cause. Then we had a couple or three years which were fairly good cotton years, rather dry and the boll weevil did not hurt it so bad, and it went up to forty cents a pound, and we dropped back to cotton again and naturally left off hogs. But we are getting back to the hog business now, and to better hogs.

Q. Now, when did you start to going back into the hog business practically?

A. A year and a half ago, or two years.

1715 Q. Now, it will take some little time to build it up again?

A. Yes, sir.

Q. How many years?

A. I believe from two to five years from now we will have things settled I believe.

Q. As a matter of fact, Mr. Wilson, during the years of the high priced cotton, and the other years you mentioned, didn't the farmers even sell some of their brood sows?

A. Yes, some of them sold practically all the hogs they had.

Q. And they are going to have time to—they will have to have time to get back into it?

A. Yes, and to get good breeding stock.

Q. And that necessarily will take time for breeding good hogs, and getting back to where they make good in that business?

A. Yes, and we want them to take time, and want them to go slow, and get good brood sows, and good blood lines all the way through, and get educated about how to raise them before trying to raise them and it is a failure without that.

Mr. Prestwood: All right, Mr. Taylor.

Cross-Examination by Mr. Taylor.

Q. Mr. Wilson, I believe you say you came here in 1916, in January?

A. Yes, sir.

Q. Is that correct?

1716 A. Yes, sir.

Q. What is your connection with the county farm demonstration association, or whatever it is?

A. What is that?

Q. I say, what is your connection with the county farm demonstration association?

A. We haven't any; it is farm—country farm demonstration agent, in place of association.

Q. What is this institution that you are the agent of?

A. It is known as the Co-operative Extension Work South.

Q. Where is headquarters?

A. Auburn, is the state headquarters.

Q. Auburn is in this state?

A. Yes, sir, and the head of the department is in Washington.

Q. Is what?

A. In Washington.

Q. What is your territory?

A. Covington county, unless otherwise called out.

Q. Have you been in Covington county during all this time, from January, 1916?

A. Yes, with headquarters at Andalusia.

Q. At the time you came here the Andalusia Packing Company was just organized then, were they?

A. Under construction; already organized and under construction.

Q. But had not got to operating?

1717 A. No, sir.

Q. What was the condition existing at that time with regard to the supply of hogs throughout this country?

A. The supply of what?

Q. The supply of hogs throughout this county; what was the condition at that time?

A. Well, we had worlds of hogs at that time, as soon as they began to build the plant they went to getting hogs. That was the condition about six or eight months before I got here.

Q. What do you mean by that was the condition?

A. That we had lots of hogs.

Q. That is, it began about six or eight months before you got here, and there were lots of hogs in this county?

A. They started to getting lots of them raised here.

Q. Just started?

A. Yes, sir.

Q. In six or eight months they had gotten lots of hogs?
A. A good many hogs, yes.
Q. The hogs of the class you described; rather, would you characterize those as piney woods rooters, which you described so facetiously awhile ago?
A. Yes, sir.
Q. And they were pretty much of that kind, all of that kind?
A. The larger percent, yes, sir.
Q. These hogs though were quite numerous, where they not?
1718 A. A good many, yes.
Q. Were there as many of them then as there are of the other hogs now?
A. Do you mean as many piney woods rooters, or as many head of hogs?
Q. As many head of hogs, counting the piney woods rooters and everything, as there are hogs now, counting the piney woods rooters, and hogs of all kinds?
A. I would say about the same at the beginning of 1916.
Q. What condition followed from the time you came here, with regard to the development of the hogs; take it first during the year 1916?
A. Well, they began to sell hogs here in the fall of 1916.
Q. First confine yourself to the character of the hog development, and the increase of hogs during that year?
A. There was a good deal of increase in hogs in 1917.
Q. First 1916. Let's confine ourselves to 1916?
A. I came here in 1916.
Q. Well, that was January, 1916?
A. Yes, sir.
Q. And you traveled about the county and observed those things from day to day, did you not?
A. Yes, sir.
Q. How many hogs would you say there were in the county when you got here?
1719 A. Oh, say fifty or sixty thousand.
Q. How do you arrive at that figure?
A. There were some eight thousand farmers in the county, which would give them seven or eight hogs apiece.
Q. It would bring it something over fifty thousand wouldn't it?
A. Probably so, but that is an approximation.

Q. I understand you are not testifying as to the exact number?

A. No.

Q. I did not anticipate that you would attempt to do that. Now, would you be quite sure, or would you be willing to swear that there was not a hundred thousand here then?

A. Yes, sir.

Q. Would you be willing to swear there was not seventy-five thousand in the county during 1916 at any time?

A. On a definite number I would not swear anything. You can't get a statistician to do that.

Q. What would be your best guess as to the number of hogs here?

A. From fifty to sixty thousand.

Q. And it might run over that, and it might possibly have been less?

A. Possibly. That is an estimate; in my best judgment, that is my estimate.

Q. To the best of your estimate that is the number of hogs here now?

A. Something like that; yes.

1720 Q. Possibly more?

A. Possibly more and possibly less.

Q. Do you think it possible that there is less than fifty thousand hogs in the county today?

A. There may be. My estimate is from fifty to sixty thousand.

Q. Now, with a supply of sixty thousand hogs, how many of those can properly be sold during the year?

A. Fifty per cent.

Q. And retain fifty per cent for breeding purposes?

A. Yes, sir, and for home consumption, yes.

Q. That is, for all purposes aside from selling?

A. Yes, sir.

Q. Fifty per cent could be retained?

A. Yes, sir.

Q. In retaining fifty per cent, can there be an increase, based upon that reduction, of fifty per cent from year to year in the whole supply?

A. You mean would it be possible?

Q. In the ordinary course of conditions, and with the proper attention given to hog raising, would there be any increase from year to year, if you should sell fifty per cent, or would it just keep it balanced?

A. There might be an increase, but I would not say there would be an increase.

Q. Most of the hogs during the first year, your first
1721 year, 1916, were pretty poor ones, a pretty poor class of hogs, if I understand your testimony correctly?

A. Yes, sir.

Q. Now, take the next year, 1917; how many hogs were there here that year?

A. We had an increase, I suppose of hogs that year which would reach eighty or ninety thousand.

Q. And what was the character of those hogs?

A. Practically the same as the others. Maybe ten per cent or five per cent I will put it better, but practically the same as in 1916.

Q. Now, 1918, how many hogs were here, would you say?

A. There was practically the same there was in 1917.

Q. And what was the character of those hogs?

A. They began to increase some, I would say ten per cent maybe.

Q. That is, ten per cent of improvement?

A. Yes, sir.

Q. You mean by that ten per cent over the year 1917?

A. No, ten per cent improvement over 1916.

Q. Now, take the year 1919; how many were there?

A. It would decrease there something like, I guess, put it at seventy or eighty thousand.

Q. Taking the calendar year from January 1st, 1918 to December 31st?

A. You asked about 1919.

1722 Q. 1919, I mean?

A. There was seventy or possibly eighty thousand.

Q. You mean the calendar year?

A. Yes, sir.

Q. And what was the character of those hogs. Was there any improvement in them?

A. Yes, there was something like ten per cent improvement that year I think from the previous year.

Q. Ten per cent over 1918?

A. Yes, sir.

Q. Now, take the year 1920, how many hogs were there?

A. We dropped back down to about I will say forty or fifty thousand.

Q. And what was the character of those hogs?

A. Fifty per cent over the previous year.

Q. About fifty per cent over the year 1919?
A. Fifty per cent better, yes, because the culls were sold
Q. And take the present year, the present time, how many hogs are here?
A. Something like fifty or sixty thousand I think.
Q. And what is the character of those hogs?
A. You have an increase there something like twenty per cent over last year.
Q. That is in the character of the hogs?
A. Yes, in the character of the hogs.
1723 Q. So at the present time am I correct in assuming from your statement that practically all the hogs here are known as hard hogs?
A. Hard hogs?
Q. Yes?
A. I haven't mentioned hard hogs.
Q. I know you haven't?
A. We dont grow hard hogs in the South.
Q. Then what do you mean by ten per cent improvement in the character of the hogs?
A. Improvement from the standpoint of breeding and the ability to put on pounds and to gain certain pounds from certain pounds of feed, and the quality of the meat that they would turn out.
Q. Direct yourself to the quality of the meat. What do you mean by that?
A. Well, the hog preferred is the one having good width, and good depth, and good round hams, and good round shoulders, and a short neck, and a good round back, and not too big a percent of bone.
Q. Do you also take into consideration the texture of the meat, as well as the shape and size of it?
A. Well, the texture of it really does not come in my work, but I will give you this, if it will answer the question—
Q. No. I simply wanted to know whether you took into consideration the matter of texture?
1724 A. It would improve it to a certain extent, yes.
Q. In your opinion can a packing house be more successfully operated on these improved character of hogs than it could have been upon the character of hogs than it could have been upon the character of hogs which existed here in 1916, when you first came here?
A. I think it would be easier to sell the products, but I

could not answer the question definitely. I don't know anything about the packing business.

Q. Now, going back to the sales, and this organization which you have spoken of; what was the first one that you were in any way connected and where was it organized?

A At Florala?

Q. In this county?

A. Yes, at Florala.

Q. When was that?

A. In the winter of 1918 and 1919.

Q. Where was that? I mean when was that? Can't you be a little more definite than that when you started to organizing it?

A. I wont be certain just when it was.

Q. It was sometime during the year 1918 and 1919?

A. I said the winter of 1918 and 1919. The month I do not remember.

Q. Tell me about this, how did it start out at first?

A. These fellows, these farmers around Florala, the lower edge of this county, and the upper edge of Florida, there

1725 were no buyers there, and few if any had hogs in carloads and I went to Auburn and got the state marketing agent to call these fellows together, and talked to them and told them what they would have to do, to ship the hogs co-operatively, and stayed out there, and we went in and graded the hogs and weighed them up and put them in pens according to the grade, and then auctioned them off that afternoon and that was the first sale, and I believe a local man bought them.

Q. What do you mean by a local man bought them?

A. It was two local men I believe, two Florala men.

Q. And who were those men?

A. Mr. Hughes and Mr. Cannon.

Q. And what did Mr. Hughes and Mr. Cannon do with them?

A. Shipped them and sold them. I don't know where they sold them. They did not sell them at Andalusia. I know that.

Q. Do you remember how many hogs were auctioned off there at that time?

A. I think about three carloads the first sale.

Q. Did you find this to be a pretty successful way of enabling the farmers to get rid of the hogs, or to dispose of them?

A. Where they had no other means of marketing them, it was the only way the little farmer could sell them.

Q. And are you still having those sales, or this sales association at Florala?

A. They have a sale of some sort there, yes.

1726 Q. And what other associations are there in this county?

A. We have an association at Opp.

Q. Where else?

A. That is all.

Q. How long had the association at Opp continued?

A. Two years.

Q. How long has it existed?

A. Two years.

Q. When was it organized, as nearly as you can recall?

A. In the fall of 1919.

Q. Were you one of the organizers of the Opp association?

A. I did the same thing there that I did at Florala, the city talked the proposition over with the men and they got me down there, and we showed them how they ought to do it, and then they elected their officers, and we met them long enough to show the men how to grade the hogs, and how to weigh them. I say "we," I mean the state marketing agent, and when they got to where they could handle it themselves, we were through with it.

Q. And you and your association was practically the creators of the sales association or selling association?

A. How is that?

Q. You and your association was practically the creators of the hog selling association?

A. I don't know how you take it. I would not answer yes or no.

1727 Q. You brought the idea to them?

A. Yes, sir.

Q. And helped to carry it out?

A. Yes, sir.

Q. And they realized the advantage of it, I mean that the farmers worked with you to bring about the associations?

A. Yes, sir.

Q. And they were very successful and very beneficial to the farmers?

A. Yes, sir.

Q. And have been carried on from time to time down to the present?

A. I have not attended all of them. When it was convenient and when they asked me to be there I attended them.

Q. I did not suppose that you attended all of them, but you have attended them from time to time?

A. I have attended some of them, yes.

Q. What buyers appeared to buy at those sales?

A. Well, each time that I have been to them, I always did have a bid from Swift & Company.

Q. You mean that you have bid for Swift & Company?

A. No. I didn't say that. I said they had a bid there from Swift. I said we had a bid there. That is, what they were worth at Andalusia. I got the market for them here and at the Montgomery stockyards to. I want you to get this straight now.

1728 Q. Yes. I want to get it straight?

A. Mr. Wright at Opp, and Mr. Clark were two men who bought there several times. There is a hog company at Kinston, I forget the man's name, and there is a buyer who lives at Greenville who has been buying for the Cuban market has had bids there several times. He had nothing to do with these bids on the hogs. That is the part I wanted you to get straight.

Q. Did Swift & Company have a salaried buyer at any of those sales?

A. What?

Q. Did Swift & Company have a salaried buyer at these sales?

A. Not that I know of.

Q. One of their employees, a buyer there?

A. Not that I know of.

Q. Well, did they get any other bid for those hogs bought at those sales?

A. The stock men there—I just answered that they did not.

Q. They did not?

A. No, they always had Swift & Company's prices there too, to see whether or not,—to determine what the hogs were worth on the ground.

Q. Who is that?

A. The sales manager.

Q. Who is that you mean had several prices; you mean those who were conducting the sale took the precaution to

get the prices from Swift & Company at Andalusia
1729 and any other concerns they could?

A. It was the sales manager's business in the hog sales, and it was my business in my work to help the farmer to find out what his hogs were worth on the ground that it could be compared with all the markets from Chicago to Andalusia.

Q. I think that is clear. I thank you. I assume your relations are very cordial with Swift & Company, and with the employees of Swift & Company; is that correct?

A. My relations with Swift & Company is just the same as with any other institution in this county, such as the banks, or the Chamber of Commerce, or the big business men, or the little business men.

Q. You come in contact with the head of the department quite frequently, in all the various works you have spoken of, did you not?

A. Any work that I have to put through I have to have all the fellows to help me.

Q. Did you ever ask them to send buyers around to those sales?

A. No, sir.

Q. The more buyers you have at the sales the better the competition would be, wouldn't it?

A. I don't know. I had seen hogs, where there was just one or two buyers that brought above the Montgomery prices. I cannot say that the more you get the better the competition is.

Q. If the buyers really wanted the hogs the better
1730 the prices would be, wouldn't they?

A. Well, I will explain the question a little. A hog at Andalusia or you might say a hog at Andalusia and at Opp has the same value on him, and when you get much above, you are not going to get anybody to go much above that price, if you get to that price, and we always had our own means of getting them to where the price was offered.

Q. Anybody who wanted the hog would go to the market price, wouldn't he?

A. Oh, yes, sir.

Mr. Taylor: That is all.

Redirect Examination by Mr. Prestwood.

Q. You always had Swift & Company's prices at the sale?

A. They were always very glad to give us the prices, yes.

Q. I say you always had their prices at the sales?

A. Yes, sir, all I ever attended I had their prices, and I understand the sales manager had them when I was not there. That is one of the legs they base the value of the hog upon.

Q. And Swift & Company quotes daily prices?

A. Yes, Swift & Company quotes daily prices.

Q. On all grades of hogs in this section, and all seasons of the year; is that right?

A. Yes, sir.

Q. I believe you testified the spread of the prices,
1731 according to your observation, has been something like two cents under the Chicago market?

A. To the pound, yes.

Q. Now, Mr. Taylor asked you if a packing house could be run more profitably with a better grade of hogs than it could with the kind we originally had here. You said you didn't know about that. I will ask you on the other hand, other side of that question, if it is more profitable to the farmer to raise the better grade than this kind that we did have?

A. Sure. Sure.

Q. Now you spoke of the fact that we were going back into the hog business again since the slump in 1920.

A. Yes, sir.

Q. And we had you say, something like,—what did you say? Fifty—

A. Now here?

Q. Something like fifty or sixty thousand now?

A. I think so, yes.

Q. And a large number of those, Mr. Wilson,—they are pigs and not ready at this time for the market?

A. Yes, sir, the larger per cent of the hogs right now,—you have practically the same condition now as far as the per cent of breeders and small pigs is concerned that you had in 1916, in the beginning of 1916.

Q. A large per cent are pigs and not ready for market?

1732 A. Yes, sir.

Q. I mean now?

A. Yes, sir.

Q. At this season?
A. Yes, sir.
Mr. Prestwood: That is all, I believe.

Recross Examination by Mr. Taylor.

Q. I want to ask you, Mr. Wilson, with regard to the spread of prices, what was the source of your observations and conclusions?
A. How is that?
Q. You testified about the spread which had prevailed at various times since you came here. Let's go back to 1916. What did you say the spread in prices then was between Chicago and Andalusia?
A. The difference between Chicago and Andalusia must have been or was from three to five cents.
Q. What observations did you get? Where did you get this information from? What did you examine?
A. I took the Chicago prices in the daily papers, their quotations of the big markets, and then note what the hogs bring.
Q. Take a given time in the year 1916, say the 1st of July; if that is a fair time, and if not, take any other date. Would that be a fair date to take, or would it be better to take the month of November, the first of November, or the end of
1733 November. What would be a fair date to take to make a comparison between the prices?
A. If you make the comparison right you have to take it through the year.
Q. You have to take a particular date?
A. Take November 1st.
Q. November 1st, 1916? What was the Chicago price on hogs?
A. I don't know.
Q. Well, about where was it?
A. I don't know.
Q. What was the Andalusia price?
A. I don't know.
Q. Did you ascertain what the prices of either was at that time?
A. Not on that particular date, as far as I remember.
Q. Do you know any day you did ascertain it. I will give you all the latitude you want?
A. I answered the question as plain and as definite as I

could. It was not my business to figure out the hog prices from day to day, not every day, but I know from a comparison of the figures what I gave you is approximately correct. Not the definite figures.

Q. I want to find out what your knowledge came from, and I am entitled to do that?

A. I will tell you how we get it. If hogs are worth, in the Montgomery Advertiser, quoting the Chicago prices for yesterday, nine cents for today, in Chicago, and the prices
1734 here would be seven cents for hogs, and I know that is two cents difference. I know that is hard common sense. And I know that impression became stamped in my brain, but as to a particular time, I do not know about it.

Q. So is is merely an impression?

A. It is a correct impression.

Q. How correct was it? What were the prices? Let's get at the details of it

A. If you give me the Chicago prices on that day, I will tell you what the Andalusia prices were; the relative prices; but I do not remember the prices.

Q. I am not here to testify, but you are brought here as an expert to testify, and I asked you what the spread was, and I want the source of your information?

A. And I have given it.

Q. Would you put your impression, which you say is an absolutely correct impression, against the records?

A. How is that?

Mr. Taylor: Read it.

(The question was read.)

A. From the records is where I got my information or my impression.

Q. The records must be as your impression now recalls it, regardless of what the records would show at the present time; would you say that?

1735 A. Let's have the question.

Mr. Taylor: Read it.

(The question is read.)

A. My impressions made from the records of the prices, the relative prices, between the hogs bought at Andalusia and at all times from 1916 up to now compared with the prices paid in Chicago; as to any particular date, I cannot answer it.

Q. Have you got those records which made these impressions?

A. No, sir.
Q. What did you do with them?
A. The daily papers, these records were, and as any other daily paper, they were destroyed.
Q. Now, I want to know just how much was the greatest spread between Chicago and Andalusia prices during the present year of 1921, at any time, the greatest?
A. Around two cents.
Q. Around two cents?
A. Yes, sir.
Q. What do you mean by "around two cents"?
A. Possibly half a cent above or a half a cent below.
Q. Well, would you say the greatest was two and a half cents?
A. I think so.
A. Yes, sir.
Q. And the least spread during the year 1921 was what?
1736 A. Say a cent and a half.
Q. A cent and a half?
A. Yes, sir.
Q. Now then what is the greatest spread in 1920, during the year 1920?
A. I don't remember those things. I cannot answer it definitely.
Q. You came here to testify about it?
A. Yes, but when you get into figures, I am not an expert on figures. That is not a part of my work; that naturally is the impression I got, and I think it is about correct but I can't give it to you definitely.
Q. That is exactly what I wanted you to admit?
A. I said my impressions were correct, but the exact figures I do not remember.
Q. What is your impression as to the greatest spread during the year 1920; your correct impression?
A. Let me give you the whole number of years again?
Q. No, 1920?
A. The variation has been from three to five cents, up to about two cents a pound. It has been coming this way.
Q. I will give you an opportunity to give it in detail, as the correct impression exists?
A. The hog markets vary at times.

Q. That is what I wanted to find out?

1737 A. At times the Montgomery market paid more for number two hogs than Chicago paid for number one, or for number three hogs than for number one in Chicago.

Q. The man who bought them paid more in Montgomery for number three than in Chicago for Number one?

A. That is known to happen, higher on number three than number one on the same date, on account of competitors.

Q. Coming backing to Andalusia, tell me what is the greatest spread between Chicago and Andalusia prices in the year 1920?

A. I cannot answer it.

Q. Have you any idea at all?

A. No, sir.

Q. Now, for the same year what was the lowest spread during the year 1920?

A. I can't answer it.

Q. You have no idea at all what it was?

A. I cannot answer it.

Q. Now, take the year 1919; what was the greatest spread between Chicago and Andalusia prices?

A. I wont answer that either. I can't answer it. I can't give you that.

Q. Haven't any idea at all?

A. I have an idea but can't give it definitely enough in figures; you have got to take the figures to do what you are talking about. If you will give me the Chicago prices

1738 on any date I will give you an idea of the Andalusia prices.

Q. Take 1919; what was the spread, the least spread?

A. I don't know.

Q. Any idea at all?

A. I have an idea. I am not going to give it in figures.

Q. You wont swear to it. You dont want to testify to it. Now, take the year 1918; what was the greatest spread?

A. It is ditto. Get back to 1917, and then I will give it to you.

Q. You have no idea of the lowest or greatest,—the least or greatest spread in the year 1918?

A. No, sir.

Q. Is that correct?

A. I have an idea, but it is not in figures.

Q. It is not sufficiently definite so you want to testify to it here?

A. Yes, if you want to pin me down on it exactly. You understand.

Q. I thought that all along. Now, we get down to the year 1917; what was the greatest spread?

A. About four and a half cents.

Q. Between Chicago and Andalusia prices?

A. Yes, sir.

Q. And for the same year, what was the least spread?

A. Around three, two and a half to three.

Q. The least would be two and a half, wouldn't it?

1739 We are getting the extremes?

A. More than two and a half.

Q. The least spread was two and a half?

A. Yes, sir.

Q. How about 1916?

A. I do not remember, I did not pay much attention to the hog market in 1916. I was treating hogs then.

Q. You do not remember as to the greatest or the least?

A. No, sir.

Q. Now, take this wide spread you spoke of in 1917; what part of the year was it?

A. In 1917?

Q. Yes?

A. The greatest spread, it is through the heavy running months.

Q. That is along in November, 1917?

A. I say through the heavy running months.

Q. Along about November and December, 1917?

A. When you get the lowest stocks on hogs.

Q. What time was the least spread of two and a half?

A. How is that?

Q. What time of year?

A. Generally speaking in the spring and summer.

Q. May have been July?

A. I can't say.

Q. When would you say the spread of two and a

1740 half cents in 1921 was?

A. November and December.

Q. Rather, that is when it will be?

A. Would be, yes.

Q. You are talking about what is going to happen?

A. I am answering the questions in a general way from my view points, and those are general answers I am giving you.

Q. I assume from some of your answers that they have been based upon the assumption that there was an increase in the slaughtered hogs by Swift & Company since their taking over of the Andalusia plant; is that correct?

A. Yes, they increased the number of hogs slaughtered.

Q. Just how big an increase did you have in your mind in answering the questions?

A. I don't know. I cannot answer as to the per cent. It has been considerable.

Q. Well, did you have a hundred per cent increase?

A. Hardly that much.

Q. Go as high as seventy-five per cent increase?

A. You are trying to pull me back into figures again, and that is a thing I am not going to answer definitely; I know there was an increase, I would say fifty or sixty per cent. That may be wrong. I know there has been an increase, and a considerable increase, and how much that increase has been I cannot say.

1741 Q. It might go as high as a hundred per cent?

A. I said that I did not think it would go to a hundred per cent.

Mr. Taylor: That is all.

Redirect Examination by Mr. Prestwood.

Q. Now, Mr. Wilson, as farm demonstration agent it was a part of your duties, so as to be able to inform the farmers, to stay in touch in a general way with the markets, was it?

A. Yes, sir.

Q. And you did stay in touch by reading the daily papers?

A. Yes, sir.

Q. By noticing the market quotations of the various centers given in the daily papers you knew what the market prices were and from that information, why, your recollection as an expert is as you have stated heretofore?

A. Yes, sir.

Q. Mr. Taylor: Did you expect to get more definite information out of the witness than I did.

Mr. Prestwood: That is left for the Commission later on to say.

Mr. Taylor: Is that all?

Mr. Prestwood: I believe that is all, Mr. Wilson.

Examiner Sadler: The witness will be excused. Take a recess until one thirty.

(Witness excused.)

(Recess taken until one-thirty P. M.)

1742 J. L. THWEATT, called as a witness by the respondent at Andalusia, Alabama, on July 28, 1921, testified in substance as follows (pp. 4018-4029):

That he is at the present time manager of the Andalusia plant and district manager in charge of 12 branch houses of Swift & Company with headquarters at Montgomery; that it is the practice of Swift & Company to send out bids to hog sales in that section of the country where they have notice or are requested to do it; that there is not enough live stock in this territory to keep the Andalusia plant running 12 months in the year; that it would require 5 years to develop the country sufficiently under a campaign that Swift & Company are carrying on to develop live stock raising; that at the present time the plant can operate successfully for 3 or 4 months of the year; that the Andalusia plant has been operated at a loss for the last 3 years; respondent's exhibit #23 shows the profit and loss of Swift & Company's operation of this plant for the years 1917 to 1921 inclusive; respondent's exhibit #27 shows the original investment and what has been expended since then.

Cross-Examination.

That the bids that were sent out to the hog sales were an offer for all the hogs at the particular co-operative sale, FOB Swift & Company's plant, subject to Swift & Company grades; that hogs were sold to Swift & Company as a result of these bids; that the wires containing the bids were signed "Swift & Company"; that the manager of the sales shipped them in.

1743 T. E. HENDERSON was hereupon called as a witness, and being duly sworn, testified as follows:

Direct Examination by Mr. Prestwood.

Q. Mr. Henderson, what connection did you have with the Andalusia Packing Company?

A. I was president of it from its organization.

Q. Up until the time it was sold to Swift & Company?

A. Yes, up until the time it was sold to Swift & Company, July 24, 1917.

Q. And as president, you also had the active management of it, did you?

A. Principally so, yes.

Q. Now, during the time you did operate this plant, I will ask you if you did not operate it on a rising market all the time?

A. Yes; that is very largely true except January 1917, or May 1917—I think the market was a rising market from the time we started, a slightly rising market, before January 1st, and after January 1st it was better.

Q. Now, Mr. Henderson, do you know of any acts on the part of Swift & Company or any of its agents where they used any unfair means to bring about this sale?

A. No.

Q. Were you willing to sell?

A. Yes, I was willing to sell; I tried not to let them know it.

Q. That was the sentiment of the principal stockholders in the plant also?

1744 A. Yes sir.

Q. Now, after they acquired this plant, Mr. Henderson, do you know of any acts on their part or their agents to suppress any competition?

A. I never heard of it.

Q. In the buying and selling of live stock or the selling of the manufactured products?

A. I never heard of it.

Q. I will ask you in your judgment whether or not this section of the country was benefited or injured by the purchase of this plant by Swift & Company?

A. I regard it as being benefited.

Q. And you have a reason for that?

A. Yes.

Q. What is it?

A. Well, they were more capable of conducting the plant in a financial way and by experience than we were. And the possibility of the plant being run indefinitely was greater under their operation than under ours, because we felt that we might have a financial reason sometime for closing it, and they would not.

Q. Well, the only way you carried on the operations dur-

ing the time you did was by personal endorsements of you and a number of stockholders?

A. I think practically all the money we operated on
1745 was carried on the personal endorsement of eight or ten or six or eight or ten stockholders.

Q. All of you had small holdings in the company?

A. The largest individual holding, I think, was about seven thousand dollars.

Q. And it was scattered through something like two hundred stockholders that owned the stock?

A. I have forgotten how many, but it was around two hundred; there might have been more or less.

Q. And it was all in small blocks, that is, the stock?

A. Yes sir. And from the organization on, eight or ten men had to carry the financial responsibilities of the two hundred.

Q. What is your judgment as to whether or not that plant could be sold locally here now or in this territory?

A. I don't think they could sell it at all now to anybody in this section.

Q. Swift & Company have enlarged it, have they?

A. That is my information.

Q. Well, you know that?

A. Yes, they enlarged the plant.

Q. By looking at it?

A. Yes sir.

Q. In your judgment as a business man, do you believe that any other packer could be interested in this plant to pay the original investment of Swift & Company in it as it stands now; that is, the investment in purchasing it and the improvements that they have made?

1746 A. Basing my answer upon the experience of other packers at other points, and the condition of the plant at that time, I don't see why they would want to buy one when they have some closed up elsewhere.

Q. The other packers?

A. The best of my information; I don't know of my own knowledge, but I have been told they are closed.

Q. You have been reliably informed?

A. Yes sir.

Q. You would say, would you not, that Swift & Company is in a better position to carry on the development of this plant in this section of the country along the live stock lines

than any other company would be on account of their having been here four years and understanding the territory?

A. Well, they have got three or four years the advantage of the other fellow, by connections and otherwise and the relations with the people, and the other fellow would have to get that if he came in; and it strikes me that they would be in a better position than anybody else.

Q. Now, have you had any observation as to whether or not the other packers since Swift & Company have owned this plant have been more active in this territory in the sale of their products?

A. Well, I have not been connected with buying the products, and of course personally I could not say of my own knowledge about the activities because of not being di-
1747 rectly connected with the purchase of packing house products, and I don't know.

Q. Now, you said awhile ago that you did operate the plant during the time before the Andalusia Packing Company—that you operated it on a rising market?

A. Yes sir.

Q. Practically all the time?

A. Yes sir.

Q. Up until the time you sold it?

A. Yes sir.

Q. And if that had been just to the reverse and had been a falling market, why, what would have been the condition of the Andalusia Packing Company?

A. Well, that is only problematical, you know. The loans would have been called in as fast as they matured, and some of the endorsers would have had to make good some of the obligations. That is all.

Q. Well, the company could not have stood very much loss, could it?

A. No sir.

Q. It had its capital invested in the plant, had practically all of it invested in the plant?

A. Yes sir.

Q. And the capital to operate on they had to borrow?

A. Yes sir.

Q. About how much borrowed money did you have to use?

1748 A. The maximum amount?

Q. Yes?

A. (No response.)

Mr. Taylor: I think the record shows all of this.

Mr. Prestwood: It will?

Mr. Taylor: At least, will show the amount of borrowed money at this time.

Mr. Prestwood: I have not been present all the time.

Q. What is your recollection about it?

A. What is my recollection?

Q. Yes?

A. Well, of course it is my recollection, the best that I remember, that around three hundred or three hundred and fifty thousand dollars was the maximum.

Q. The maximum?

A. Yes, sir.

Q. At one time?

A. Yes, it might have been more or less. The figures which give a detailed statement of the exact amount are here, as far as that is concerned.

Q. How is that?

A. There is a detailed statement showing that in the record or in the files.

Q. There is?

A. Yes, sir.

1749 Mr. Horton: May I examine the witness a moment?

Examiner Sadler: Yes.

By Mr. Horton: Q. Mr. Henderson, whether or not you had made any money up until January 1, 1917?

A. You say whether or not?

Q. Yes, had you made any money up until January 1, 1917?

A. With regard to the statement of January 1, 1917, my recollection is that we had not made any appreciable amount of money or practically none, if any.

Q. Then when the statement came out just prior to the sale of the plant you did show a surplus?

A. Yes.

Q. Is that true?

A. Yes, sir.

Q. It showed a surplus?

A. Yes.

Q. In your opinion what caused it; what was that due to in your opinion?

A. We had a rising market.

Q. You had a rising market?

A. From January to May 1st, a rising market.

Mr. Taylor: Is it understood that this testimony continue under the same stipulation as to witnesses heretofore examined?

Mr. Horton: Yes.

1750 Q. Whether or not you carried considerable product on hand during that time?

A. Yes, sir.

Q. Do you remember what it was, what the product was?

A. Not definitely; my best recollection, something over a million pounds of stuff.

Q. What class of product?

A. Sweet pickled meats, and dry salt meats, and lard.

Q. Now, Mr. Henderson, when you made the representations to Swift & Company, with a view of selling this plant, was the object or not to sell them the plant, as distinguished from the stock, or was the idea to simply sell the plant as a going concern?

A. Well, I know I don't know, Mr. Horton, that is, I dont know that it was ever discussed, all I had in mind was to sell the thing, lock, stock and barrel and get rid of it. That is the only idea I had.

Q. That was your idea?

A. Yes, sir.

Q. You used the means of disposing of the stock as a purpose to that end?

A. That was more or less the motive I thought.

Q. And if Swift & Company had wanted to buy the physical assets you were willing to sell?

A. He could have bought any way he wanted, so we got the money.

1751 Q. Do you remember testifying in Birmingham?

A. Yes, sir.

Q. And this question was asked you, whether or not you sold the product on the Birmingham market for the same prices as the hard northern hogs, sold for, and what would you say to that question?

A. I would say we did not get as high prices for our products on the Birmingham market as the other packers got for Western hogs.

Q. You state it was a lower price or prices?

A. Yes, sir.

Q. Would it depend somewhat on the market conditions there?

A. The market conditions would alter it some, to some

extent. We had to sell our stuff for less money. That is what Mr. Allen always told us, verified by the prices submitted to us by him from time to time.

Q. These three books,—do you recognize this as a part of the records of the Andalusia Packing Company.

A. That is the same form we used. Of course the typewriting, I can't recognize it, but I recognize these figures; this here is the handwriting of Walter Davis, our bookkeeper. I will say that is his.

Q. Would you say these books, from your examination, were the same?

A. I dont know anything about that now. They
1752 used records like that down there. I had nothing to do with the books.

Q. In your best judgment are those the records of the old Andalusia Packing Company?

A. Take a piece of paper, and a typewriter, and it is pretty hard to identify it. The dates, Allen & Company, and Clark & Company, and all that in there would indicate they are the books we used; consignment books.

Q. It would?

A. Yes, sir.

Mr. Horton: That is all. I would like to have those marked for identification but you need not stop to mark them now. Mr. Henderson is anxious to get away.

Mr. Prestwood: I want to ask him another question.

By Mr. Prestwood: Q. What effect, Mr. Henderson, would it have on this section of the country if Swift & Company should for any cause cease the operation of the plant here?

A. I would it as having a very detrimental effect.

Q. I will ask you if in your judgment as a business man, if the fact that Swift & Company came in and purchased this plant has stimulated confidence in all lines of business in this section of the territory?

A. Oh, yes, sir.

Q. Would you say that the people generally throughout this territory are well pleased with Swift & Company's operation of it?

1753 A. Generally, generally speaking, yes.

Mr. Prestwood: That is all.

Cross-Examination by Mr. Taylor.

Q. Mr. Henderson, I believe Mr. Prestwood asked you what would be the effect if Swift & Company should cease operations. You answered it would be very disastrous?

A. I said I would regard it as being very detrimental.

Q. Thank you. Now I will ask you what would be the effect if Swift & Company were to cease operations but the plant were to be carried on and operated just the same?

A. Well, if it was operated by some financially successful concern, I don't see where it would be much difference, if any.

Q. You say you operated on a rising market for a year. You as a matter of fact you know that Swift & Company operated on a rising market for three years after that, didn't they?

A. I have not kept up with the market since that, with the market declines since they had the plant, but since they had it the market has been up and down, both ways.

Q. The general trend though was up until about a little over a year ago, wasn't it, along about probably May, last year?

A. They had a pretty good market during most of the war.

Q. I would like for you to compare, if you recall, the retail prices on pork cuts, at the time you sold out to Swift & Company in July, 1917, with the retail prices today?

1754 A haven't any recollection, nor the figures before me to make the comparison. My recollection as to the rising market is simply this, when we had the inventory of January 1st made we showed no appreciable gain, if any, but when we made the inventory the 1st of May, by the application of the current prices, of May 1st, and beyond, we had shown a profit of some fifty thousand dollars.

Q. No. I am not talking about that. I am talking about the retail price of meats today, and in July, 1917?

A. I beg your pardon. I didn't get it just that way. I dont know what it retails for today.

Q. In your best recollection, about the same retail prices as they were in July, 1917, aren't they?

A. I don't know; I dont know what they bring today.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Examiner Sadler: The books will be marked Respondent's B-19, 20, and 21, respectively, for identification.

(Thecrupon the books were so marked.)

Mr. Prestwood: We wanted to reserve the right to introduce later some documental evidence in the form of some objections as a part of our offer today. We haven't got them ready now. We cannot offer them now, but we wanted to reserve that right before your honor finally closed the
1755 hearing. Then we could put them in wherever you say.

Mr. Taylor: I consent for them to be received at any time before adjournment, under the same stipulation, the testimony has been taken under.

Mr. Prestwood: You mean, Mr. Taylor, before adjournment? I think they can be attached as exhibits. We will send them to the Examiner and he will submit them to you all.

Examiner Sadler: Why not send them to Mr. Horton and let him introduce them for you folks?

Mr. Haycraft: Why dont you offer them now and send them to the Commission any time before the case is submitted?

Mr. Prestwood: That is what I am trying to do, to offer them now, and to get them to you later. Counsel might look over them. They might be introduced under the agreement, that is, a part of the program that we have been carrying out the two days past.

Examiner Sadler: I will say that the objections will be received under your agreement with Mr. Taylor, and marked as exhibits after they are received.

Mr. Prestwood: That is all right. You mean his agreement to exclude?

Examiner Sadler: His stipulation.

Mr. Taylor: I wanted to know if they came under the stipulation; that is the only thing I was particularly interested in.

1756 Mr. Prestwood: In conclusion, Your Honor, we want to thank you, on our part for your courteous treatment. We certainly have no cause to complain. We certainly hope, when the Commission settles down to business, and those gentlemen see what the sentiment is down here, that they will let us alone, and let us go on developing this country, on account of the very cordial relations existing between the present operation and the community at large.

We want to thank you again for your nice, courteous treatment to us all during this examination.

Examiner Sadler: I will state that I appreciate your remarks, and I want to thank you gentlemen for the way you have conducted your examination.

(At this point in the hearing Mr. J. Morgan Prestwood and Mr. W. H. Albritton withdrew.)

1757 H. H. McKEE was thereupon recalled as a witness, and having been previously duly sworn, testified further as follows:

Direct Examination by Mr. Horton.

Q. Mr. McKee, I believe you have previously testified in this case?

A. Yes, sir.

Q. How many years experience have you had in the packing business?

A. Twenty years.

1758 Q. How long have you been at the plant?

A. Since March, 1918.

Q. Have you been connected with the operating end or the sales end, or both?

A. Both.

Q. I would like for you to state in your own way, and in your own words, what you find as to the quality of the hogs in this vicinity with reference to their value, as compared with Western hogs?

Mr. Taylor: We object to the question as being irrelevant and immaterial.

Examiner Sadler: The objection will be noted.

Mr. Horton: Mr. Taylor, might we not have a stipulation similar to that which was extended to the attorneys who have conducted the hearing in this city, with reference to the objections? The attorneys referred to are Messrs. Albritton and Prestwood.

Mr. Taylor: Let the record show that after discussion between counsel, it was agreed that both parties might proceed until further arrangement, to offer such evidence as to them seems proper, and that any evidence offered and received in the record should be subject to an objection which may be hereafter made by either side, on the ground it was

either irrelevant or immaterial, but any objections to the form of the questions should be made at the time the
1759 questions are asked.

Mr. Horton: That is all right.

Read the question.

(Question read.)

A. I find in comparing the soft and oily hog which is raised in this section, and which constitutes ninety-five per cent of all hogs, slaughtered at this plant, since March, 1918,—which was the time I started here, that it does not compare in quality no wise as compared to the corn-fed hog. I find that they are soft, and it is very hard, and in fact, it is impossible to trim them, to trim the different cuts from these hogs so as to present the proper appearance on the market when sold as a finished product which makes it merchantable. I have had some experience in cutting up hogs for the past seventeen years, and have made every effort possible to find out some way whereby the soft and oily hog, can be trimmed so as to hold their shape, and compare, when they are on the market, as a finished product, with the Western cut. On account of it being soft and oily, if the cuts are cured through either the sweet pickle cure or the dry salt cure, and smoked, they show up very bad, regarding their appearance; they become ragged, and the hams has not got the neat trim and appearance that the corn-fed hams has; that is, the ham produced from the corn-fed hog. It is my idea that it would be physically impossible to trim those cuts so as to make them compare favorably with hard hog cuts.

1760 Q. Does that affect the commercial value of it?

A. It certainly does. I find it is a serious objection that the trade has to our cuts which are made from the soft and oily hogs. To demonstrate the point, take, for instance, a ham from a soft and oily hog, after it comes out of the smoke the butt and fat side of the ham will drop from one to two inches out of its place, which makes, particular the first slice off the ham undesirable, and no one would want to purchase it. You take a ham from a hard hog, and the first slice off the butt of the ham, if they want to slice it, is perfect, a perfect slice practically. On hams, you have to cut a pound or two pounds from a ham made from a soft and oily hog before you get back to where you will get a uniform slice. The same is true as to the bacon. Hams and bacon made up a large percentage of the hog when it is dried—when it is manufactured into the finished product. So

much for that. We find also that the soft and oily hog does not yield within two or three—the yield of the soft and oily hog is two to four per cent less than the same weight hog,—the same weight as regards fatness. Yields that much less than a hog raised and fed to produce firm pork. The records as a matter of fact show that. That alone makes a difference in the live prices between the soft and hard hogs, of fifty cents per hundred pounds live. We also find in the hogs, soft and oily, whether fed peanuts or acorns as they do in
1761 Arkansas,—and I have had some experience with the soft and oily hogs in St. Joseph, before coming here, and we found the hogs are affected with parasites, such as kidney worms, and what we call parasite livers, and they are affected in such a way as to cause a good percentage of the killing fats to be condemned by the Government inspectors as not being fit for edible production and it has to go into the inedible tanks, and naturally causes a loss as compared to killing hogs that are not affected that way. A loss from the killing fats from the fancy meats is bruises and abscesses, and we find more on the soft and oily hogs than the hard hogs. And the bruises and abscesses are not the only losses in the weight of themselves, but in removing the bruises from the hogs, you disfigure a ham, or belly, or whatever cut it is, and it throws it from a number one cut into a number two cut, and the market prices on the number two cut, run as a rule around two cents under the number one cuts. We find a percentage of the hogs affected with the bruises, that the loss on them, and the loss on the killing fats, and offal products makes up anywhere from fifty to seventy-five cents on the hundred pounds live weight. It varies, of course; and in some cases, as for instance, you may run along for three or four days and not run into a great many bruises on hogs, and might find a week's kill without running into a considerable number. It depends a great deal on the section of the coun-
try in which they are raised, and on the way they are
1762 raised. We have noted some improvement along those lines since we have been here. We find a great deal of it was brought about by visitors going through our plant and here and we call their attention to the bruises on the hogs, and we also call their attention to the same thing in cattle, and they have readily seen that when a man strikes a hog with a fence rail, or kicks it with his foot, or punches him with any rod or anything that we may have in his hand, and they have seen the damage, and they are getting away from

that, and the quicker that they get away from that, as we call their attention to it, they alone will receive the benefit of it, because the cleaner the hogs come into the plant, the cleaner they are when they go off the killing floors, and the freer from bruises, the more value we will get and that in turn goes back to the farmer.

Q. Could you distinguish the extent of the bruises on the live hog in all the cases?

A. It is impossible to tell, whether a live hog is bruised unless it shows an enlargement in some part. The bruises I speak of would be impossible to tell, from looking at the hog, and on the killing floor, as soon as we get into it, it is cleaned on the killing floor.

Q. How about a cut in a hog while he is live, in his carcass?

A. You could detect those in live hogs if they were large enough perhaps, but the per cent that are noticeable on the live hog of cuts is not very great. Most of them are
1763 small bruises. I might say that I find lots of cases where bruises no bigger than a quarter, the surface of the bruise don't show larger than a quarter outside on the hog, and on the killing floor, as soon as we get into it, it is spread over an area of twelve square inches. It seems as though the bruise spreads through the tissues of fat. That almost damages the cut and makes it worthless as far as marketing it as a cut; it has to go into the sausage material, and that is always at a loss of as big on the average as ten or twelve cents a pound. We find quite a number of cuts we have to do that with.

Q. Now, is this condition you speak of,—is that prevelant more or less, as compared with the hard Northern hogs?

A. You mean we don't find the condition among the hard Western hogs?

Q. Do you find the same condition in the hard hogs?

A. No, we would not find anywhere near the amount of bruises. You don't find out of a kill I will say of three thousand hogs you would not find five hogs with the kidney worms in a Western plant, and I am speaking from experience because I worked on the killing floors, and cut the hogs and split the hogs and I know personally that you do not find but a very few hogs that are affected with the parasites like you do in the soft hogs.

Q. In considering the market conditions down here, with

reference to the months of the year that the hogs come in; will you explain that to us?

1764 A. It is a fact that we kill from seventy to eighty per cent of our hogs in the four months, but it varies as to the starting time; last year our hog run did not start until January, and ended about the middle of March, and I mean by hog run the bulk of the run that was offered at that time; they were late in starting, which was caused from what we think on account of the decrease in the market price and the low price of peanuts, and they could not sell the peanuts for anything, and hogs were gradually coming down every week, and they simply kept the hogs until they could clean up the peanuts, which made the run start in January, and during that month and February we got the bulk of our hogs; but that was not so much of an advantage because we had to start to building up our hog killing gang along about the middle of November, and we prepared for the run, and were figuring that it would start the next day and always and keeping on and on and on, and in fact, we carried it along six weeks, and a great deal larger gang that than we necessarily would have carried, figuring that the run would always start the next week, and they did not start until January, and then they worked us to our capacity for the next nine weeks, and after that about the middle of March the run suddenly dropped off, and then it became a squabble, I mean a proposition in order to get the hogs.

Q. Have you gone into other territory other than this adjacent to Andalusia?

A. Well, we have stayed in a certain radius of An-
1765 dalusia because what we call a favorable shipping distance, but we have sent out quotations quoting our market and always keeping in touch with the shippers who had been shipping to us for the past two or three years, and we find the competition in buying hogs there are so many on the market buying hogs at a price of a quarter or a half for a hundred, take a great many hogs from us; and we stayed within what we knew the market was on them, and what we knew we could get out of them and what we could sell the hogs for. We could not go out and pay more money, but that is a fact that we did pay more money than we could sell them for at times, but we did not feel like we could go out and discontinue against the other buyers who wanted the other hogs and seemed to be willing to pay as much as Chicago was paying for the hogs in order to get them.

Q. Have you bought hogs on the Montgomery market?

A. We have bought some hogs on the Montgomery market, yes.

Q. Whether or not you are using your best efforts to get all the hogs you can to kill at this plant?

A. I will say—

Q. (Interrupting) At the market price?

A. I will say we have done more than that; I will say that the prices we have paid for hogs in the past eighteen months would indicate that we have been willing—at least we have been paying out more money for hogs than we could sell them for, or could hope to sell them for, knowing
1766 that there is a differential here between hard and soft hogs and that should be at least two or three dollars a hundred in order to take care of the loss in the low oils and the loss caused by excessive bruising and being affected by parasites which affects the killing fats and the offals and the excess of the shrinkage that we have in the cooler. The differential under which we have sold soft pork compared to the western pork, we have paid more money for these hogs that we have killed than we have been able to sell them for.

Q. You mean by that your hindsight justifies the proposition that your foresight was wrong?

A. You mean the reasons for it?

Q. I mean at the time you bought the hogs you expected of course that you could sell at least to come out even?

A. Yes sir.

Q. Whether or not you have been on a declining market for some time?

A. Yes, starting in July and August, 1919, which was the last high peak reached in the hog market, we have been continuously working on a declining market with the exception of two months when the prices steadied up about one dollar and fifty cents a hundred, up until the present month. That price has decreased from the average price during the months of July and August, 1919 of eighteen dollars and eighty-two cents in July, and eighteen dollars and eighty-five cents in August, until it has reached the average in price in June or five dollars and eighty something—I
1767 don't remember, it is not on this paper, but I know that is about the average, and it was practically a decreasing market continuously from that time up until date, with the exception as I say of one or two months in there, and possibly three, when the market steadied temporarily, but it was not up long enough to affect us.

Q. Since the low price of five dollars and eighty-seven cents in June of this year, has the market changed again?

A. For the past five weeks our market has been continuously rising, and today our market advanced to nine dollars and forty cents, which we paid for No. 1 hogs.

Q. That is per hundredweight?

A. Yes sir.

Q. Now, did you hear the testimony which was given in the court house today?

A. Yes sir.

Q. You did hear Mr. Taylor cross-examine certain witnesses, whether or not the price had advanced greatly while Swift & Company had the plant?

A. Yes sir.

Q. Since they bought it?

A. Yes sir.

Q. I will ask you to examine the Respondent's Exhibit No. 28 and No. 29, and say whether or not Swift & Company had ever had the benefit of the increase in the market as

1768 much as the Andalusia Packing Company had?

A. I would say on the face of the statement, no, which is the true condition which has existed since the purchase of the plant in July, 1917.

Q. Mr. McKee, I call your attention to Respondent's Exhibit No. 25 which shows the number of the head of hogs which have been purchased outside of the vicinity of Andalusia. I will ask you if you would have done that had you been able to secure enough hogs to supply the plant here in Andalusia?

A. No, we only purchase hogs on the outside which refer to Montgomery and Nashville markets to fill in when short of receipts from the local territory.

Q. I will ask you if that does not represent the maximum of an effort to get the hogs to run this plant?

A. It most certainly does.

Q. Now, Mr. McKee, are you familiar with the improvements that Swift & Company has made to the plant since 1917?

A. Yes sir.

Q. Since they purchased it?

A. Yes sir.

Q. I will ask you to state what has been done.

A. We have made numerous improvements, and I might state when we purchased the Andalusia plant that it was a

mere skeleton of a packing plant, and we had to improve it before we could successfully operate it and turn out
1769 the products up to our quality, and it was necessary to make practically all the improvements that we have made; it would not have been possible for us to have handled our business at Andalusia and work under the same system and with the same conditions about the plant as they were when we came here. To start with, we had to have more cooler space, to proper take care of and handle all of the meats, which cost a good deal of money; and in fact, in the main building we spent—I have a little note of it here—in the main building we spent sixty-seven thousand dollars, and I mean by the building, it takes in what we call the building is putting in insulated room. changing them from the outside temperature rooms to refrigerator rooms, which means cork for plastering them and putting in refrigerator pipes, and we also put in ninety-one thousand dollars worth of equipment in the main building which was practically the only building which was here when we came with the exception of a couple of small shops outside which did not have a total value of over five hundred dollars. Outside of the main building we have put in what is called a stock food plant and that is a plant that handles the tankage both from the edible and the inedible tanks, which dries it and makes it into what is called digester tankage. This building is also erected to take the stock water away which comes from the tanks after the product has been rendered, and they have gotten the grease also out of the product if it is edible product, and the water is conveyed from that down into what we call the 29 form
1770 we have, which means that degree solid, and then the stock is dried and ground into tankage, and that is necessary to erect this building in order to do that. We could not produce the digester tankage successfully unless we made the improvements, and the digester tankage is one thing that goes with a packing house.

Q. While you are on that I will ask you whether or not the stock food building and the digester tankage building was for the purpose of taking care of the ground products?

A. It was.

Q. So you could operate more successfully?

A. Yes sir.

Q. Is that products which would otherwise go to waste?

A. Yes sir.

Q. Now, please continue.

A. We also put up on the outside a fire protection system which cost around ten thousand dollars, which consists of fire hose and pipes, and we did that in order to get any insurance to speak of, on the fire improvements we did that for the protection of the plant, and we also erected dressing rooms and erected a restaurant, with the employees to serve meals, the number consisting of enough to make it necessary also to put up a building to take care of our supplies, and we put up machine shops and blacksmith shops and we put up feed houses to take care of the live stock carried from
1771 one day to another; and the improvements altogether we felt was a necessity to properly handle the business, and we also erected a new office building in order to take the employees out of the plant where it was not desirable to have them over in the plant where the office was under the old management.

Q. Were there any added office facilities at all?

A. There was not until we erected the new office; no.

Q. Now, have you made any improvement in the method of handling the products so as to get it out to the consumer in better condition?

A. Along those lines we have made quite an improvement, I would say; and I would say so simple because it seemed to be a case of almost riding the branch houses of our selling organization to dispose of the soft oily product when we first started, and we continuously worked with the idea of improving the appearance of it in making it more attractive when it reached the market, and I will state that we have made quite an improvement along those lines.

Q. Going back to the plant for a minute, have you improved your facilities for getting the meat into the cars in better condition?

A. We erected a vestibule loading dock which was very badly needed under the old management and under the first year of our operation; we had to load our cars by taking the chilled products out of the coolers and loading them off the platform where the temperature nine months
1772 out of the year averaged from seventy to a hundred and the products naturally when they went into the refrigerator cars, naturally they reached the market with not the right appearance that they now have, being loaded in continued refrigeration.

Q. And it was without these added facilities which the old plant, the old company worked with?

A. Yes sir.

Q. Did you put in a Sharp freezer?

A. There was no freezer at this plant when we came, and that is an improvement I failed to mention.

Q. What advantage did you gain from that, if any?

A. There are certain products such as fancy meat products, where it is necessary to have a freezer and where it is also necessary to have a freezer to properly carry over the product from one day to another. You may have some fresh pork which cannot be disposed of immediately, and by having a freezer it can be frozen and marketed in perfect condition; otherwise it would go on the market in not as perfect condition as it was by being frozen.

Q. And what effect did it have upon cured meats such as pickled hams?

A. It had this effect: by having a Sharp freezer and freezer storage, we could take a number of hams which was accumulated during the heavy season and Sharp freeze them and put them up in storage and then bring them back and thaw them out and put them in pickle in proportion to the amount of order we were going to have, that we were getting for the
1773 finished pickled products by taking all the hams and putting them into pickle during the three or four months that you kill practically all the hogs in, and we know no company could,—at least we could not, and it would be hardly possible for anyone else,—to dispose of the cuts as fast as they become cured. If you did it would mean that you would close the plant up to July 1st each year, and open about November. In order to have some products to sell during every month in the year it was necessary to install a sharp freezer to freeze the products so we could bring it back and put it in the curing process so we could have some products to sell each month. Otherwise, the names would be off the market for a while and the result would be that when you started to putting the next batch of he product back on the market it would be a new thing to the public you might say and you would have to establish it again to a certain extent, and if you did not handle it that way, you have to leave it in pickle and it would get old and finally sour. When it was put on the market if carried to August or September it would not be so hard to sell the trade, and we would be able to build up the business. The way the old company operated they sold sweet pickled meat, and I know positively, the records showed they had four hundred thousand pounds,

of sweet pickle on hand May 1st; we know it that most of it accumulated during January and February, practically five or six months previously. We know meats left in the cure that long does not compare with the products handled in a different way.

1774 Q. Is there such a thing known as bone sour in meats?

A. After a piece of meat is cured the right period, a certain number of days, it ought to come out of the cure; the pickle is not the place to hold the stuff, not the place to hold the product for storage.

Q. Are you familiar with the hogs raised around this territory?

A. Yes sir.

Q. Are you familiar with what is known as the razor back and the piney woods rooter?

A. Yes sir.

Q. Do they still exist in this country?

A. Yes sir.

Q. Whether or not you could go out and drive along the road and see some of them at the present time?

A. I would be safe in saying that I could take you ten miles in most any direction and have to shoo some out of the road to get by; I find that the case most every time I go out driving.

Q. I call your attention to Respondent's Exhibit No. 14, a pamphlet entitled Growing Hogs in the South, and I call your attention to page 8, where there is a picture of several hogs is portrayed. I will ask you whether or not the photograph is true to life?

A. Yes, it is.

Q. That is what is known as the razor back hog or range hog down here?

1775 A. Yes. I would like to mention we had some of these hogs as shown on the picture which would compare favorably with that exhibit at our fair last fall; alongside of the hogs in a pen, we had eight hogs raised out here on our demonstration farm which showed the extreme difference.

Q. By the way, what is your demonstration farm, what do you mean by that?

A. The farm was started for the purpose of demonstrating to the farmers in this section as to whether or not it was

possible to have green pasture for hogs to graze on twelve months in the year through this section of the country; and I think we are safe in saying that we have demonstrated that fact thoroughly, that it is possible to have the green pastures to graze the hogs on twelve months in the year in this locality, and we have also proven it by the hogs we have raised out there successfully that we have had no trouble in growing rotation crops, and it can be done on almost any farm throughout southeast Alabama.

Q. Whether or not you have showed your farm to visitors?

A. Yes sir.

Q. Whether or not visitors visit your farm?

A. I think at least ten thousand visit that farm, I will say, within the past fifteen months.

Q. Ten thousand people from this vicinity?

A. Ten thousand people from this vicinity.

Q. Whether or not those visitors are confined to this 1776 county or not?

A. Yes, the visitors come within a radius of a hundred and fifty miles.

Q. Now, what else has Swift & Company done to promote better live stock in this vicinity?

A. We have, through the management of this plant, we have met with several bodies of men from this section and town and counties, and have discussed with them what the benefits would be to the producers of hogs and to Swift & Company if better grades of hogs were raised, and what it would mean in helping us to establish a trade for the product produced from soft and oily hogs; and it would make a matter, as we have explained to them, it would make a proposition where it would make it much easier for us to improve the quality and appearance of the soft and oily cuts if they were from a better grade and a better breed of hogs; and I think we have demonstrated to a majority of the farmers, that is, a large percent who visited our plant, we have showed them cuts in the plant coming from a good, well developed hog, and we have showed them cuts coming from what you might term a piney woods rooter, and they could readily see that it would be physically impossible to develop the trade and establish a standard market for the products produced from these piney woods rooters; and they have made a wonderful improvement in establishing a better grade and quality of hogs in the past two

or three years. I think a large percent of that was nat-
1777 urally come about from what they have actually seen at our plant. We took them into the cellars and have showed them the thin dry salt belly from the piney woods rooter, alongside of the belly that comes from a well bred hog, and which has got good weight and thickness, and they could readily see we could get more cuts from a good quality hog much better than from the piney woods rooter.

Q. And whether or not you have placed any good live stock around in this section of the country?

A. We have placed some thorough-bred boars and gilts around through this section, and we have also placed some thoroughbred bulls, white faced herefords that have no doubt done a wonderful lot of good throughout this section.

Q. And chickens also placed—

A. We have placed thoroughbred Plymouth Rock chickens throughout this section and also ordered them for different people in this section, chickens from up in Iowa, thoroughbred Plymouth Rocks and White Leghorns and the ones we put out among the farmers at the plant, quite a number were brought back to the fair, and the folks who raised them felt very proud in being able to exhibit that class of chickens.

Q. Now, Mr. McKee, you had a long experience in the practical operation of packing houses. You are familiar with the conditions down here?

A. Yes, I should be very well familiar with them.

1778 Q. I will ask you to refer to Respondent's Exhibit marked "B"-9, for identification, which is also the same records that Mr. Thweatt brought to Birmingham on subpoena issued by the Commission there and marked Commission's Exhibit A 19 for identification. I would like for you to explain to us in a practical way what the record means with regard to a rising market.

A. Yes sir.

Q. Which Andalusia has gone through— First, I will ask you whether or not the record does not show the consignments made to J. W. Clark & Company and to E. P. Allen & Company?

A. It does, it shows the invoices to those, J. W. Clark and E. P. Allen, and on the face of the invoices starting in May it shows that—in August, rather—

Q. 1916?

A. August 1916 shows lard, tierce basis, on the invoice, 13¾.

Q. 13¾ cents per pound?
A. Yes sir, and the same records show in May—
Q. 1917?
A. 1917, 23 cents; and these records also show—
Q. Just what does it mean to this packing house as a practical proposition; what does it mean in dollars and cents on the lard?
A. The lard produced at this plant equals about 15 percent of the live weight of the hog.
Q. About 15 percent of the live weight of the hogs?
A. Yes; which, when you get down to the dressed
1779 weight, add 25 percent or about that, makes the lard equal to—in other words, when you dispose of the lard you dispose of fifteen to nineteen percent of the weight you have.
Q. Why did you add twenty-five percent?
A. I mentioned it would equal around fifteen percent of the live weight, and you spoke about the dressed weight, and it is always twenty to twenty-five percent less than the live weight, and I should have mentioned the dressed weight.
Q. That is to say, a hog dressing out two hundred pounds, weighing two hundred pounds alive, would weight about seventy-five percent of it dressed?
A. Yes, dressed from seventy-two to seventy-five.
Q. Have you examined also Respondent's Exhibit B-10, which is a record of the kill, a record of the old Andalusia Packing Company?
A. Yes sir.
Q. Now, as a practical packing house man, I would like to have you state how long it would take the Andalusia Packing Company to accumulate a carload of lard?
A. It would, of course, depend on their killing; they would produce a carload of lard about every week during the heavy killing.
Q. First let me ask you what were their facilities here for producing lard?
A. Their facilities were overtaxed during the killing season.
1780 Q. How many cattle vats did they have?
A. They had one tank, and this tank had to be worked double, had a tank twice out of every twenty-four hours, which is not practical if continued.
Q. In considering that tank and that capacity, how long

would it take for them to accumulate a carload of lard on the average?

A. During the busy killing season, four days to a week; with the exception of three months, you could operate from ten days to three weeks. Do you mean that would allow for lard on hand? As a rule that was produced from the kills killed anywhere from a week to two weeks previously.

Q. Now, I would like for you to give further illustrations how the market prices are, and how the advance in the market prices affected the financial operations of the packing house while it was under the management of the old Andalusia packing house?

A. Dry salt bellies in November, 1916, sold for sixteen cents at the Andalusia Packing Company, and in May, 1917, they had advanced to 23 cents, and shoulders advanced from November, 1916, from fourteen cents to eighteen and a half in May 1917.

Q. Now, how long would it take a car shipped from here to Atlanta to reach Atlanta?

A. It would take, from the time we loaded the car, it would take it three days from time it was loaded until they could unload it in Atlanta, on an average. They might beat that by one day occasionally.

1781 Q. How long would it take to Biringham?

A. Two days.

Q. Whether or not on a constantly increasing market let —like that such as was experienced by the old Andalusia Packing Company, products would actually be worth more when it reached the place of destination than when it left here?

A. There is no doubt that on some occasions during that time when the products advanced from the time the product was loaded here until it got out on the market in Birmingham and in some cases going to Atlanta, because it was during the period when it was almost a continuously rising market.

Q. Now, going back to Respondent's Exhibit B-19 again, whether or not these brokers ever took advantage of that fact that this company took advantage of that fact, or if the brokers took advantage of that fact?

A. Some of the invoices would indicate that they did and no doubt the invoices were based on the market value of the product at the time of being invoiced, and some of their in-

voices shows it was sold for more money than it was invoiced or consigned to them for.

Q. Is it true others show less?

A. There are.

Q. Some show quite a bit less, do they not?

A. Some of their shows—I remember one, I think was around two hundred dollars on the car.

1782 Q. Well, here is one consignment to J. W. Clark & Company, Atlanta, I will ask you whether or not it shows a loss of $104.42?

A. It does.

Q. Also it is true that does not take into consideration the commission?

A. That is the loss outside of the commission.

Q. And also outside of the freight?

A. Yes, outside of the freight.

Q. Now, Mr. McKee, taking into consideration the market prices of hogs and the rise and the fall in the market since July 24, 1917, and taking into consideration the facilities which the Andalusia Packing Company had for marketing, packing and marketing their product, and taking into consideration the fact that they were operating practically on all of that period on capital endorsed by individual stockholders, I will ask you whether or not in your judgment that company could have survived under that management of the old Andalusia Packing Company?

A. I would say beginning in March, 1919, and up until the present time, which has been the most unfavorable market conditions we ever went through, I would say they would not have been able to have withstood the loss and still keep an open market for live stock each day; I dont believe they would have been able to do that, and the result would have been that they would have had to have closed up, because we have our selling organization, which is established

1783 and which is undoubtedly very efficient and we found it very unprofitable and with the old Andalusia Packing Company operating with no more experience, and with no more experience in selling, in the selling end, it does not seem possible that they could have continued business during the past two years, under present conditions as they have existed in the last two years in the packing house business.

Q. Would you say those conditions were responsible for

the closing of the packing plants in this southeastern section?

A. Undoubtedly they are.

Q. Do you know of any territory through which—do you know of any territory through which the old Andalusia Packing Company operated from which they have withheld this meat?

A. Swift & Company has, in my understanding, covered, with this plant and the Moultrie plant, all the territory that was ever covered by the old Andalusia plant. That does not mean exactly that it was covered from this plant. The same territory was covered; our products produced at this plant were sold in these territories, but it was distributed in some of the territory by our branch houses because we could ship the product to the branch houses in carload lots, and they could redistribute it from the branch houses to a better advantage than shipping in small shipments as we would have had to have done.

Q. Do you mean it was cheaper and got the product there in better condition?

A. It was cheaper to the man and the main thing 1784 is getting the product there in better condition.

Q. Now, I will ask you if you actually know of any territory which—from which Swift & Company has withheld this meat?

A. I know of no territory that this meat has not been distributed to by Swift & Company which was previously reached by the old Andalusia Company.

Mr. Horton: That is all.

Examiner Sadler: We will take a recess until nine o'clock tomorrow morning.

(Whereupon an adjournment was taken, at 5:00 o'clock P. M. July 28, 1921, to 9:00 o'clock A. M. of the following day, July 29, 1921.)

1785 Docket No. 453

Andalusia, Alabama, July 29, 1921.

Met pursuant to adjournment, 9:00 o'clock A. M.

Before:

Clarence T. Sadler, Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

H. H. MC KEE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Horton (Continued).

Q. Mr. McKee, I hand you herewith a map of the state of Alabama, and I will ask you to indicate on there with a blue pencil the territory covered by the car routes from the Andalusia plant, please.

A. We have already outlined that territory on our car routes covered the shipping from the Andalusia plant.

Q. It is included within the blue pencil markings, is it?

A. Yes sir.

Q. The blue pencil mark contains the outside boundaries?

A. Yes sir, the blue pencil mark contains the outside boundaries which we reached.

Q. Whether or not you sold to all of the towns within that boundary?

A. We sold to all the towns which could be reached;
1786 there might possibly be in that section or inside that circle a few towns which were supplied with our products from larger towns which we reached; I mean by that that we might reach towns on the edge of a very thinly populated section and it might be some little distributing point back in this section that they call a town, and our products would get there by the customer coming to some other dealer and carrying the products back by wagon.

Q. Simply, your testimony is that you worked every town in this territory where there was any possibility of getting business without too great an expense?

A. Yes sir.

Q. You discontinued the car routs at this plant, did you not, Mr. McKee?

A. Yes sir.

Q. Whether or not that territory is still being worked by Swift & Company?

A. There is no question all the same territory is being worked by our branches and our products still being—and I mean by our products I am speaking of Andalusia—are still being distributed just as thoroughly through this section as they were when handled by the Andalusia car routes.

Q. Now, whether or not the branch houses cover the territory outside of the confines of your car route territory?

A. The Andalusia car routes did not; this business is handled by the branch houses, who can get at it more
1787 advantageously than we could.

Q. What do you mean by more advantageously?

A. They could reach these points by railroad connections, as a general proposition, as I understand it.

Q. For instance you have a branch house at Mobile?

A. Yes sir.

Q. Whether or not their territory came up and met your car lines, your car route lines?

A. They did.

Q. Whether or not Montgomery came down and met you?

A. They met our salesmen on the north.

Q. And the other houses the same?

A. Yes sir.

Q. Now, I hand you herewith a map of Florida, as is already in evidence as Respondent's Exhibit No. 12. I will ask you to take a blue pencil and indicate on there where your carlines operated within the state of Florida?

A. (The witness marks on map.)

Q. You have marked them, have you?

A. Yes.

Q. Now, does this mean you would follow the railroad along, you worked the railroad as you indicated by the blue lines, is that it?

A. Yes sir.

Q. Now, whether or not your branch house at Pen-
1788 sacola came up and met your carlines or the territory not covered by this point?

A. The branch house at Pensacola reached all points not covered by the Andalusia car routes, yes sir.

Q. That is all the territory in western Florida you show on this map?

A. Yes sir.

Q. Now, Mr. McKee, did those car routes sell the Andalusia product alone, or some of the northern hard product?

A. It was the arrangement with the car route selling organization to push the Andalusia product and to make every effort possible to sell this Andalusia product in the territory which we covered, but at the same time we were not to pass up business where the trade insisted on the product from firm hogs, or western meats, which consisted of our standard brands, and it was with that understanding, and insisted on continuously from the time the car route selling started, and I am quite certain the same arrangement now exists in our branches which are handling the same territory.

Q. Then the first consideration was to sell the output of this plant so far as you could, and so far as the trade would take it?

A. Yes sir.

Q. Is that true?

A. Yes sir.

Mr. Horton: Now, I offer this Alabama map in evi-
1789 dence, Mr. Examiner.

Mr. Taylor: As I understand the same stipulation which we have regarding our insistence on objections will apply, will it not?

Mr. Horton: I think inasmuch as the arrangement was to expedite the hearing that it would not apply to the exhibits. They are few and far between and perhaps it would be better to make the objections at the time the exhibits are offered, for that reason.

Mr. Taylor: Very well, that is entirely satisfactory to me. No objection.

Examiner Sadler: The map will be received in evidence, and marked Respondent's Exhibit No. 31.

(The map was thereupon received in evidence, and marked "Respondent's Exhibit No. 31.")

Q. Mr. McKee, referring again to the time when the Andalusia Packing Company was in operation, from the standpoint of selling the product, and from the standpoint of the readiness with which the product sold at that time on the market, I will ask you how did it compare with other items: you have had twenty years of experience in the packing business?

A. From my experience, it has always worked out on a rising market which is almost always caused from a shortage of whatever the product is, and I am speaking of hogs, it makes it easier to sell, and you have less trouble in dis-
1790 posing of what you might call No. 2 products, there is always a certain demand regardless of market conditions; for a certain amount of No. 1 product, and my experience is that you generally clean up and dispose of a large percentage of the No. 2 product more readily when you have a rising market and that condition did exist during that time to a certain extent, existed during a part of 1918. At the end of the war, in 1919, that fall, market conditions changed, and from my experience in the selling end here, we found it very difficult from that time on to dispose of our products, because of the fact that the hog market started to decline during the month of September, in 1919, and never stopped until about four weeks ago, except about a two months period when it showed a little incline.

Q. When you were speaking about No. 2 products, in what sense did you use that?

A. I mean the No. 2 products covered by the products produced at the Andalusia plant, which was at least ninety per cent.

Q. You mean the soft products?

A. Around ninety per cent of the pork products grade as No. 2 products.

Q. Do you find that the buyers buy very freely when there is an advancing market?

A. I know from working on the plant end, on a rising market, prices of pork cuts go up and the prices of hogs continued going up, and the orders come in more lively,
1791 and our shipping picks up and increases week after week, and we can always figure from the plant end of it, whenever the hog markets starts on a decline and continue for a period, the orders for the pork cuts decrease continuously and then it would become a proposition of the force selling organization, getting out and selling it, at whatever prices the market conditions would afford.

Q. To fix it a little more definitely, is it fair to say that on a declining market they buy from hand to mouth?

A. Yes, they do not as a rule stock up like they would on a rising market; they always keep putting you off and figuring that the thing next day will be lower and that they will

buy tomorrow, and that is what naturally happens in all lines of business.

Mr. Horton: That is all.

Cross-Examination by Mr. Haycraft.

Q. In your direct examination you referred to exhibits Nos. 28 and 29; have you got those before you now?

A. Yes.

Q. Exhibit 28 shows the live stock cost, and the number of head of hogs and the live cost of the hogs purchased by the Andalusia Packing Company from October, 1916 to July 1917, and exhibit 29 shows the figures, the same figures, from August 1917, through May, 1921?

A. Yes sir.

Q. Just what was the conclusion that you want the
1792 record to show in the comparison of these two exhibits with regard to the market price?

A. What I wanted the record to show was that hogs bought during the month of October, 1916, at an average cost of 5.33—8.53, that from that period to July, 1917, they were bought at an average price of $14.47, a spread of $5.96 a hundred. In other words, they increased, that is an increase in price of $5.96 a hundred from the average buying price of October to July.

Q. Then what did you wish it to be compared with?

A. It was to be compared with the prices of the hogs at the time we purchased the plant, which was in July, and they were selling at $14.47, and the peak reached by the average price during any one month of our operation, that being in July, 1919, when it reached $18.82, which made a rising spread of only $4.35, a hundred, as compared with a rising spread of $5.96, which the old company had had.

Q. Do you want us to conclude that since Swift & Company took over the plant there was not a rising market in the sale of products as they were during the time the Andalusia Packing Company operated it?

A. I want the record to show that my judgment is that we have—had not had the benefit of the rising market in the sale of our cuts which was brought about during the Andalusia Packing Company's time, of course, by the hog market.

Q. Now, let's look at it a minute. Dont you think
1793 it would be better for you to form such a conclusion by taking the selling price of the products rather than the

purchase price of the live hogs? You are drawing a conclusion from the purchase price of the hogs, a comparison of the purchase price of the hogs. You offered no figures to show the rise in the market on the finished products during the time the Andalusia Packing Company did business. You used lard and hams and bacon, I believe. Wouldnt it be better and more fair as a comparison to take the same products and the same cuts and carry it through the period of time you handled the cuts from the Andalusia plant?

A. I would not say so, for this reason: Our business is based on supply and demand, and there might have been a time during that period when we operated when the demand for a certain cut was far in excess of the supply, and the price of that cut had reached a price out of the ordinary when compared with the rise in price of hogs, and at the same time you might find some cut which would show relatively more cost.

Q. Would that include the Andalusia products?

A. During the Andalusia Packing Company's time of operation in my opinion there was a good demand for anything sold in our pork products.

Q. And didnt that continue until September, 1919?

A. It continued for possibly five or six months, but if you will notice the live price of hogs, you will notice that it started to fluctuate.

1794 Q. Why should the live price of hogs have anything to do with the selling price of the product, if it is based on supply and demand?

A. I do not say it was based altogether on supply and demand; some particular cuts are based on supply and demand.

Q. Have you got the records available where you could trace the same cuts down through the period of time you handled the product; for instance, have you got the figures in the records which would show during the various months of 1918 and 1919 what you had averaged receiving for hams, bacon and lard?

A. I havent the records showing the average price.

Q. Do the periodical statements show it?

A. I have looked up a couple of statements on lard and dry salt meats which show a large percentage of the cuts you get from the hog products, which shows in 1919 that lard was selling for around thirty cents, and dry salt bellies in 1919 were selling around twenty-five cents, and lard in May,

1921, was selling around seven cents, and dry salt bellies 9⅝ and ten cents.

Q. Has lard come up since May?

A. Lard has been strengthened because the hog market has been going up.

Q. What book did you get the figures out of?

A. I noticed on the inventory the figure, you might say.

Q. Haven't you produced records showing the average selling price over the periods of the different cuts?

1795 A. We could produce the invoices showing May, 1920—I mean in 1919, and the invonces of May, 1921, which would show the same spread, the same decline in price of lard and dry salt meats.

Q. What months did you include in your statement yesterday with regard to the products sold by the old Andalusia Packing Company?

A. If I remember, it was November, 1916, compared with May, 1917.

Q. Did you take in the intermediate time?

A. No, I took the invoices along in November, 1916, and another invoices of May, 1917.

Q. Suppose you take the same invoices, May, 1917—I mean November 1917 and January 1918, May, 1918, August, 1918, November, 1918, January, 1919, May, 1919, August, 1919, November, 1919, January 1920, May 1920, August, 1920, November, 1920, January, 1921, May, 1921, and July, 1921, on the same products, you filed, with regard to the Andalusia Company, and make a comparison here showing how they actually ranged during that period of time on the same products. I think the record would show that, or should show that; I think it would be proper to compare them.

Mr. Horton: What products.

A. Land and dry salt meats?

Q. Hams and bacon, I believe?

A. Hams, I believe, only three products, dry salt bellies?

Q. Whatever products it was, you know what it was?

A. Yes sir. I made a comparison on dry salt shoulders, but we have not handled any for the last three years.

1796 Q. Take it as far back as you took it then. You did no compare loins; was there any special reason for that?

A. The price on loins fluctuated a whole lot, and that is fresh pork, and has to be sold regardless of market conditions.

Q. You dont think it would be a fair comparison?
A. I dont think it would be fair to the company or the Andalusia Packing Company either, no.
Q. Mr. McKee, referring to Respondent's Exhibit No. 10 for identification, can you state from that record the number of hogs killed by the Andalusia Packing Company in October, 1916?
A. It shows 3861.
Q. Can you give me the figures for November, 1916?
A. It shows 8553.
Q. Is that the kill or the purchase figure?
A. It is headed purchase.
Q. Did you find the heading for killing?
A. That is headed purchase. The kill is a different figure. That is the number of hogs purchased.
Q. Can you give me the October killing record?
A. 3548.
Q. Then the November killing record, including the condemned?
A. 8099.
Q. And what is December?
A. 8065.
Q. Including the condemned?
1797 A. Yes.
Q. January?
A. 8153.
Q. February?
A. 7601.
Q. March?
A. 6596.
Q. April?
A. 5116.
Q. May?
A. 1818.
Q. June 1063.
A. 1063.
Q. July?
A. 608.
Q. Mr. McKee, you testified that you paid as much for your hogs as you could possibly pay and break even, or made an attempt to pay as much as you could and break even on the hogs purchased, didnt you?
A. Yes sir.

Q. Who is in charge of the buying of the hogs at this plant, is that under your supervision?

A. Jointly, yes sir.

Q. And you are given free rein as to the price you will pay, or do you get instructions or suggestions from
1798 Chicago from time to time?

A. We get an outline from Chicago from which we work.

Q. Of what does that outline consist?

A. It is an outline which shows that we should try to buy the hogs enough under the western market so that we can sell them on a break even basis.

Q. Is there any suggestion as to margin?

A. The margin was around two dollars under western market. I do not say we live up to that.

Q. What official of Swift & Company in Chicago, in the Chicago office, do you get the suggestions or outlines from?

A. From G. F. Swift's office.

Q. Now, then, you also made a statement on direct examination that there was a continuous rising market during the time that the Andalusia Packing Company operated, and due to the continued rising market and the fact that there was usually a two day interval between the time the product left here and arrived in Birmingham, and a three day interval between the time the product left here and arrived in Atlanta, the brokers at those points took advantage of the continuous rising market. How much advantage would you say a broker could take each day during that time, each shipment?

A. The market seldom rises more than a cent a pound in a day.

Q. And after rising a cent, dont it often stay on a level before rising again?

1799 A. It depends on the market conditions and the supply and demand of the pork cuts in that particular town.

Q. As I recall there was a spread between November, 1916 and May 1917 on most of the products ranging from four to—from eight to four cents, so that if there was a rise in the market of a cent and a half or a cent there must have been a stand still time or a fluctuation going back during the six or eight months in order to make up the seven cents or ten cents, would there not? There must have been various periods during that time that the market stood still?

A. Yes.

Q. You dont mean that every day the market went up?

A. No, no, I mean that the market did not show any decline to speak of during that time; it was principally a rising market.

Q. And the fact that a broker had shown a higher selling price than the shipping price would not necessarily mean that the market had risen during that period of time, would it?

A. Most certainly.

Q. Do you know—you were not at Andalusia at the time that business was carried on, were you?

A. I am judging from the invoices.

Q. You dont know how the prices were arrived at at which the goods were billed?

A. My understanding is they were invoiced at the
1800 market price the day of the shipment.

Q. You were not employed by the Andalusia Packing Company at that time?

A. No.

Q. And your understanding to that effect is purely an understanding?

A. Yes sir.

Q. Some one told you that?

A. Certainly.

Q. You don't want to testify here that was the case, you are not positive are you?

A. As to being positive that they were invoiced at the market price, there are good business reasons for thinking that they were invoiced at the market price.

Q. Suppose that they were invoiced at what they thought they would sell for in the market?

A. It would have had a bad effect on the selling results.

Q. You are not prepared to say that was not done, though, are you, Mr. McKee?

A. Not to definitely swear to it, but it don't seem to be reasonable that they would invoice the product to a commission merchant for less than the market value. They would be more inclined to invoice it at the full market value than a half a cent or a cent under it.

Q. These were soft products, were they not?

1801 A. Yes sir.

Q. And even the Andalusia Packing Company would not hope to get the western prices?

A. I don't think they would.

Q. Wouldn't it be reasonable as business men for them to invoice the product, say two cents under the western market prices?

A. I can't see any basis for invoicing it that way.

Q. Suppose they did invoice it two cents under the western prices, and we are entitled to suppose that as much as at the western prices, and even if the results at Atlanta and Birmingham showed an increase over the invoiced prices, it would not necessarily mean that there was a rise in the market, but it would mean that the brokers were able to get the western prices for the products?

A. I don't think that would be the case.

Q. Wouldn't the supply and demand at the point, regardless of the market, have something to do with the prices the broker would get for the southern product?

A. That is possible.

Q. Then they would get a higher price for the product?

A. There could be such a case which would happen, yes.

Q. Now, these car routes you testified about, how many car routes operated out of this plant during the time they were operated? When did you start the car route system out of this plant, Mr. McKee?

A. In 1918, I believe.

1802 Q. And how many did you have at the start?

A. Three, I believe.

Q. When did you increase those?

A. Up until the latter part of 1919, we were operating seven.

Q. And when did you discontinue operating them?

A. April, 1921.

Q. And how many were operated at that time?

A. Six.

Q. Did those car routes only take the Andalusia products?

A. No, they had western cuts, too.

Q. How many salesmen operated out of the plant at that time?

A. Nine, as I remember.

Q. At the highest time?

A. Yes sir.

Q. I show you Commission's Exhibits No. 197 and No. 198, and I will ask you if you recognize those statements?

A. I do.

Q. Did you use those in your plant at the time you were selling goods by the car routes?

A. Yes sir.

Q. How did you use them, in what way?

A. If I remember right, I did not directly handle the selling prices of the car routes products.

Q. You did not have charge of that department?

A. No.

1803 Q. You recognize the exhibits as being price lists of Swift & Company?

A. Yes sir.

Q. Would you say the car routes carried the products and commodities listed in the price list?

A. They carried most of those items, yes.

Q. Those staple items?

A. Yes, those are staple items.

Q. I now hand you Commission's Exhibit No. 185 and No. 196, and I ask you if you recognize those?

A. Yes sir.

Q. What are they?

A. Those are differentials. The prices we use under the western products. Rather, under the western market.

Q. By western market prices you mean the market prices on the list which you have just identified previously?

A. Yes, sir.

Q. On 197 and 198, which give the basis of the price list upon which the differential price lists 195 and 196 were based?

A. Yes sir, but I might say further that the differential indicated does not in any way or manner cover the entire differential which it took to move this pork product shipped from the Andalusia plant.

Q. It being due, I suppose, to the unforseen market conditions at the various points, you had to dispose of the products?

1804 A. It was very true since the fall of 1919.

Q. But this serves as a guide?

A. Yes sir.

Q. You were aiming at these prices?

A. Yes sir.

Q. And you came as near as you could getting them under the conditions you were working under?

A. Yes sir.

Q. I suppose you were allowed concessions by wire from Chicago from time to time on some of the items?

A. Our local men made concessions on his own account, his own accord, anything which would be satisfactory.

Q. That is not answering the question. Did you or not receive wires from time to time from Chicago granting concessions on certain items?

A. I think so, yes sir.

Q. You spoke about the efforts put forth by your company to push the sales of the Andalusia products; under the conditions at this time will you state whether or not the efforts have been successful in increasing your sales from year to year of the Andalusia product?

A. It would be hard to say; it actually increased the sales, because we had a decrease in the production of the Andalusia product; we have been able to dispose of some of it in our own locality, and we found we were unable to
1805 dispose of all of it here in our own locality through the branch houses, and it was necessary to ship a good deal to western markets.

Q. And what was the result which you got from shipping it away, then?

A. It was not at all profitable.

Q. I take it you shipped only the commodities which could be shipped a distance, such as hams and dry salt meat?

A. Yes sir.

Q. I don't know that I understood the answer to the question. Do I understand that at times when the plant was operating more than it is now, that you were unable to sell all the product in local territory, and by local territory I mean supplied by the car routes, and now supplied by the branch houses in the territory surrounding Andalusia, but during a time the plant was not operated more than it is now, or about the same it is now, you have no trouble in disposing of the product?

A. We have had trouble continuously, but it is not as great now because we don't have as much to dispose of.

Q. I will ask you to look at Exhibit No. 26, Respondent's Exhibit No. 26, which purports to be a statement showing the outside purchases of Swift & Company at the Andalusia, Alabama plant. Do you know whether or not any of these products contained in this exhibit were sold through the car routes operating out of this plant?

A. I would say ninety-five per cent.

1806 Q. Where did the other five per cent go?

A. It was possible that some branch ran short of some one particular product we had from the western plant and noway of filling it—

Q. What is that answer?

A. Let me change it. All the products brought in from the western plants.

Q. You mean on Exhibit No. 26?

A. Yes, was disposed of in this locality.

Q. In the same way?

A. Yes sir.

Q. And passed through this plant?

A. Ninety-five per cent was disposed of through the car route selling organization.

Q. Have you any way of estimating or have you the figures which would show the percentage of the total sales, the outside purchases were, during the time covered by this exhibit?

A. I can't say, I don't know that there is.

Q. By that I mean the car route sales?

A. I don't know of any figures available for that. My estimate would be fifty or sixty per cent, with reference to the outside purchases.

Q. And that would vary, I suppose, from the beginning until the present time, according to the season and so on?

A. Yes sir.

1807 Q. Is that true?

A. Yes sir. We were increasing the outlet on our products in the car route sales, on the Andalusia products.

Q. Up until when?

A. Until we discontinued it. We increased it in a way; it is true that in 1920 and in 1921 we did not have as much to dispose of, but we kept a regular amount going out to the trade.

Q. Take November, 1919, I notice on the exhibit that you sold 39,000 pounds of cured meat, and in November, 1920, 247,000 pounds of cured meat; that is quite a difference, is it not? I mean that is western stuff?

A. Yes sir.

Q. And it would indicate that there was a less amount of the Andalusia product sold during that time, would it not?

A. November, 1920, we sold 247,000 pounds.

Q. As against 39,000 in November, 1919?

A. If I remember right, probably it is accounted for in this way: On account of some new territory turned over to us by the Pensacola branch; this particular territory was very strong on buying western meats.

Q. You mean in 1919 and 1920?

A. Yes, we had to order quite a large amount of western dry salt meats in order to take care of that trade.

Q. Comparing the year 1919, to the year 1918, would these figures indicate to your mind that there was a falling off
1808 in the sale of smoked products and cured products, Andalusia products, during the year 1919?

A. I don't think that there was any period from the time I started to selling the Andalusia products in this section that the sales fell off; as I say we have gradually increased them from the start. I don't remember the figures on it, but I do remember filling the orders and handling them, and we gradually built up more business on these Andalusia brands of cuts.

Q. Well, you say there is no way of showing definitely the total sales, that you have no figures available to show the total sales in the car route territory during the year covered by the exhibit?

A. I don't believe it would be practicable.

Q. Have you any records available which would readily show the amount of Andalusia products sold in the car route territory during the same time?

A. I don't know that it would be possible; I am sure it would not be.

Q. Do you suppose the car route department in Chicago would have those figures?

A. I cannot say.

Mr. Haycraft: That is all for the present.

Redirect Examination by Mr. Horton.

Q. Mr. McKee, I will ask you to refer to Respond-
1809 ent's Exhibits No. 28 and 29 and taking first Exhibit No. 28, I notice that in December the average buying price was $7.74 per hundred, and in July following it was $14.47, which is a spread of $7.03 in seven months, and that referring to Exhibit No. 29, it shows the buying price in August, 1917, to have a spread or increase in the buying price of $4.51, covering a period of thirteen months. Now, I will

ask you if that comparison does not redound very favorably on the operation of the Andalusia Packing Company?

A. I don't understand the last part of the question.

Q. Put it this way: The sharper the advance is, confined to a short period of time, the more profit there would be for the party carrying the stock, would there not?

A. It would be more reasonable—

Mr. Haycraft: Mr. Examiner, let's have fewer leading questions. The witness is intelligent and knows his business from A to Z, and I don't believe it is necessary for counsel to lead him.

A. The quicker the market arises on the packing house products, it stands to reason would be more favorable on the basis of a rising market covering a short period, than it would be—a short period of seven months—than it would be covering a period of say thirteen months.

Q. Now, referring again to the invoices which are shown in the Commission's Exhibit A-19 for identification, and Respondent's Exhibit B-19, being one and the same book, you said that these goods were invoiced at the market price.

1810 What prices did you have reference to, the market price for hard hogs, or the differential under that, corresponding to the market for soft and oily?

A. I meant the market price based on the class of product which they were shipping.

Q. As acting assistant manager of this plant and as being connected with it since 1918, what do you consider to be your first duty with regard to selling western hogs or hogs packed at this plant?

A. Our first duty was to dispose of the hogs killed at the Andalusia plant; that is, their product, and we wanted to make every effort possible to dispose of the product produced at the Andalusia plant in preference to the western product, and we made every effort in our power to improve the quality of the product produced at the Andalusia plant, with the object in view of creating a more stable and better market for the Andalusia product.

Q. Now, when you sell the product, the soft and oily, with a differential of say, for example, two cents per pound under the western product, are you saving the retailer or the consumer two cents per pound on the product?

A. In selling the soft and oily pork we have run into the same experience in selling it as we personally ran into in handling it. When I first started to handling these soft and

oily hogs, that is, the finished cuts or trims and the cured and smoked, I figured that probably the value of them
1811 was really more than what we were actually selling it for, but by becoming more acquainted with them, as the warm weather came on during the summer of 1918, I soon could readily see why the retailer could offer arguments against our products, and one of the principal arguments was, that because it was a very soft product, it was impossible for the retailer or butcher to cut it up into slices for the trade so as to make it appear attractive as compared with the western hard products, and also as we learned by holding the smoked meats in our smokehouse here, the shrinkage was very excessive. This peanut oil comes out of the meat, and would saturate the outside of the smoked meat, and it gives it a very undesirable appearance, and we have helped that to a certain extent simply by having our sales men to tell the retailers to take a rag and wipe it off, which would help the appearance of it. In fact, we have done everything that we could think of, not only which would help the appearance of it, and give the product a better appearance as it left our plant, but we have gone into the point to see if there was anything we could do with regard to working with the retailer and by calling his attention to some method of handling our products so as to get them to the consumer in good shape. We have taken all of these things into consideration, and there is no question in my mind but what there is this differential, or this difference in price, between the soft cuts and the hard cuts, as the condition stands today.

Q. Would that be true as to the way it stood all along?

1812 A. It is very true as it stood the soft and oily hog has been raised to any extent in this section of the country, and in fact, dating back to 1916.

Q. Now, Mr. McKee in your judgment, if you can improve this product so it will sell for the same, on the same basis as the western product, and give value received for the money, then is it not true that you have simply created that much wealth to the producers of the section, without any disadvantage to the retailers or the consumers?

A. Yes sir.

Q. Now, I would like to have you to explain this; whether or not there is a constant market upon dry salt meat and other cuts, or whether the market varies and if it varies whether or not it is sharply defined?

A. I will say regarding the sale of dry salt and smoked meats, that there is a period in which they move more freely than at any other period, and that period starts around September or the last of August or the first of September, and will go through until we have a cold spell, to where the weather gets could enough to where the farmers begin to kill their first hogs, and I have seen our car route business drop off, I feel safe in saying, thirty or forty per cent in one week's time, caused by a cold spell which happened to come along, and the farmers throughout that section, or the majority of them, would start to killing and it is the custom that
1813 when a farmer kills a couple of hogs that all the neighbors in a radius of five or ten miles would be entirely welcome to some of that pork, and it had a great bearing on our sales. The largest amount of our business was done in the car route business during the fall.

Q. Now, I call your attention to Respondent's Exhibit No. 26, and I will ask whether or not it is correct as to the fluctuations and the volume, was it due to the taking on of additional territory or the leaving of additional territory off as the case may be?

A. Some of it is. The largest fluctuation—the figures shown on here only goes to verify my statement with regard to our business increasing sharply starting along about September, August or September.

Q. And whether or not there is some buyers that will not use the soft pork to any extent at all, and I refer to the territory covered by your car routes now?

A. The territory which starts into Florida, that is, it goes down to Panama City and St. Sanders Bay, and it was new territory which we had taken over and we find our customers down there who had been previously supplied to a certain extent by the Pensacola branch, and they insisted almost entirely on western pork. That was at the beginning. As we continued our car route selling from Andalusia, from the Andalusia plant, we gradually worked in more of our Andalusia product, showing some increase at the time the business was transferred to the Pensacola branch.

1814 Q. Whether or not there is much of the product represented by the Exhibit No. 26 that is not manufactured at this plant at all?

A. There is not over ten per cent of the total weight of the outside products shown on this exhibit that is manufactured at the plant. It comes in here as finished product.

Q. I don't know whether you understood the question, and in order to make it plain to you, I will ask you if you have a demand throughout this territory, for instance, for Premium hams and bacon?

A. We have a continuous demand for Premium hams and bacon in any territory we ever went into.

Q. And whether or not you manufacture them at this plant in any considerable quantity, and if not, why not?

A. We started in 1918 to curing a few Premium hams and we found that the per cent of the hogs which we killed here which were suitable for making Premium hams was so small that it did not pay to save them, and I think I am safe in saying that not over 15,000 pounds of Premium hams was cured at this plant, and there has not been any cured in the past eighteen months or two years.

Q. Whether or not the other products on there are comparable under the same situation?

A. What is the question?

Q. The other products represented by these figures

A. These figures represent Premium hams and Pre-
1815 mium bacon and Oxford bellies and dry salt bellies and Silverleaf lard.

Q. Right there; do you manufacture Silverleaf lard here?

A. We did at the start, but discontinued it on account of the fact that we could not produce a grade of lard from the soft hogs which would measure up with the quality of the Silverleaf lard, and therefore we discontinued it rather than to hurt our brand of Silverleaf lard, and we adopted a new trade name for the lard produced in this plant, and it was sold under the brand of Seminole lard.

Mr. Horton: That is all.

Recross Examination by Mr. Haycraft.

Q. How about the fresh meats, Mr. McKee, did you have a better grade?

A. The fresh meats consisted to a large per cent of spare ribs.

Q. How about the beef?

A. And beef cuts.

Q. What percentage of the figures do you think refer to fresh pork, of these figures on exhibit No. 26?

A. I believe eighty-five per cent of them.

Q. Fresh pork?

A. Yes sir.
Q. Is that fresh or frozen?
A. Fresh and frozen; it practically all is frozen; you could not well ship it out under any other condition.
1816 Q. Now, when was it you took over the Florida territory which had increased the demand or where there was more demand for the western products than the other territory?
A. It was some time during 1920.
Q. Do you recall what month it was?
A. No.
Q. Could you refresh your recollection on that?
A. I cannot say about the month.
Q. Have you got any record showing what time it was?
A. Yes, I think the record would show.
Q. If you can't find that readily let it go.
Mr. Horton: Let the record show that the witness made search and did not find the record.
Q. Were you able to find out, Mr. McKee when it was you started your route in that Florida territory?
A. No.
Q. You made search for that and did not find it?
A. Yes.
Q. Do you think the Chicago office would have the records?
A. Possibly so.
Q. You testified, Mr. McKee that at various seasons the dry salt and cured meat dropped off; that is true as to southern and western products, alike, is it not?
A. To a certain extent, yes.
Q. When you have a drop off in the dry salt which
1817 affects the buying of the southern, Andalusia products it affects the southern Andalusia products and the western products you have for sale, also?
A. Yes sir.
Q. And the same way with the hams and bacon?
A. Yes sir.
Q. Even the fresh cuts?
A. Our period covers a different period, I think. I am speaking about the western plants.
Q. I mean the stuff sold in this territory?
A. It falls off proportionately on both products, both the western and Andalusia.
Q. On exhibit No. 26, under the head of 1918-1919 you have the month of November and December—November and

December in 1918—that is really December 1917, is it not, that is the end of a fiscal period, as I understand it?

A. Yes.

Q. And November, December under the head of 1919 is in reality November and December, 1918, is it not?

A. Yes.

Q. As far as the calendar goes?

A. Yes sir.

Q. November, December 1920 as the calendar goes is November and December, 1919?

A. Yes sir.

1818 Q. And that is the way with 1921, the November, December in that exhibit is really November and December, 1920?

A. Yes sir.

Q. That exhibit is prepared to cover the fiscal years which would include under the various heads a part of two years?

A. Yes sir.

Q. And you testified on redirect examination you had in mind the market price at Andalusia or at which Andalusia sold the product, taking into consideration the fact that it was an inferior product to the western product; how much differential do you think Andalusia allowed, have you any idea?

A. Well, they operated—they were actually in the selling end of it but a short period you might say. It is true they started in June, but they were not on the market with any products to speak of before some time in October.

Q. Do you know that?

A. The record shows that they did not kill anything and naturally they did not have anything to sell. They may have had a little fresh stuff.

Q. You understand there were other records; this book showing the start in October does not indicate that there was not any killing done before that, does it?

A. There is another record here that shows they purchased hogs.

Q. As a matter of fact they started to killing in June, 1916?

A. The killing was very light until fall, and taking

1819 into consideration the summer period they were actually selling the product, as I understand it, during a period of increasing prices, not only in the packing house products, but practically everything else, and the result is it was a very

favorable market, and much more so than the market we have been selling on for the past two years, and for that reason it is a question whether you could take the basis of the differential it was necessary to have in order to make the soft pork move at that time and compare it with the differential as it is now.

Q. You would hate to testify here, wouldn't you, what was in the minds of the men running the Andalusia plant at the time the records were made?

A. Yes.

Q. You don't want to testify what the actual differential was?

A. No.

Q. That they took into consideration, if anything?

A. No, certainly not.

Q. You don't really know what differential was taken into consideration in making up the invoices and wouldn't you also hesitate to testify the relations the invoices bore to the prices actually received for the product by the broker?

A. The invoices must show the actual money received.

Q. Wouldn't you hesitate to say why there would be a difference between the two prices if you did not know what the first price was based on?

1820 A. I was judging the invoice shows the prices invoiced to the broker and the broker's sale in most all those cases shows it was sold about on that basis; in some cases they show a small profit, and other cases a loss, indicating that the invoices were made out on the shipment, and evidently must have been the market prices on what the product could have been sold at in Birmingham or Atlanta, because their returns on the invoices indicate, the first original invoices show about the price at which it was sold.

Q. From what facts do you figure that indication, how do you arrive at that conclusion?

A. I figure the broker sold the product for all the money the market could pay for it at the time the product was received.

Q. Sometimes they sold about the same price and sometimes it showed a considerable profit and sometimes a loss?

A. I judge from the ones I examined the bellies was probably one cent more in some cases than they sold for, and in other cases they sold for one cent less, which would indicate that the invoice price was in about one cent of what the market was at the time.

Q. You mean taking into consideration the inferiority to the western pork?

A. No, I mean comparing the invoices with the western product, I simply compared the market price on this exhibit, and it must have been about what was invoiced
1821 and to what the western cuts was selling for at that time, I can't say.

Q. How do you suppose—you are going all into suppositions on this proposition, because you testified you were not here and you were not an officer of the company, don't you suppose that they would take into consideration the western product price when arriving at any kind of a market price on this southern product?

A. Certainly.

Q. What differential did you have in mind that that would be under the western product or western prices; do you want to testify to the differential?

A. No, I don't want to testify to the differential of the Andalusia meat under the western prices; the only thing that I want to testify to is judging from the invoices and the prices shown on their to the consignee in reference to the prices and to the figures that they received, it indicates to my judgment that it was the market price.

Q. The only testimony that I am trying to get you to reconsider is your testimony to the effect that the returns of the brokers made upon the invoices indicated that they were able to get more—they were taking the advantage of the rise of the market from day to day, that is, the difference between the price at which the product was invoiced at Andalusia and the price at which the broker sold?

A. Yes sir.

Q. Indicated that in the interim, the two days, there
1822 was an advancing market?

A. There was some occasions of it, as the invoice would show on its face, which would indicate it, but whether it was a fact or not, I can't say.

Q. That is the point I want to make, you were basing your testimony entirely upon a conclusion?

A. Absolutely.

Q. And you are drawing it from records that you had nothing to do with making and no part in making, and had nothing to do with the transaction?

A. That is true.

Mr. Haycraft: That is all.

Redirect Examination by Mr. Horton.

Q. Now, when a broker represents a concern, he is the agent of that concern?

A. Yes sir.

Q. And it is his duty to serve the interests of that concern, of course?

A. Yes sir.

Q. And it is his duty to get the market value, if he can, for the goods?

A. Yes sir.

Q. And if he does not get the market value of the goods, he is not true to his trust?

1822½ A. He would not be a good broker, and the business he represented could not prove successful.

Mr. Horton: No.

Recross Examination by Mr. Haycraft.

Q. What conclusion would you draw from the records as to whether or not the brokers of the old Andalusia Packing Company were good brokers or not?

A. I could not form a conclusion as to whether they were or not, sir.

Mr. Haycraft: That is all.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

1823 J. L. THWEATT called again by the respondent as a witness at Andalusia, Alabama, testified in substance as follows, p. 4111-4127:

That he is the same Mr. Thweatt who testified before in this case; that the selling department of the Andalusia plant has not been moved to Montgomery; that a few salesmen who were under the supervision of the Andalusia plant now have their headquarters in Montgomery, and are under the supervision of the Montgomery branch house of Swift & Company and in a majority of cases, are still working their original territory; that the salesman who formerly worked this town still works this town, although his headquarters is at Montgomery; that in reference to the product produced by

the Andalusia plant he considered it his duty to see that it was handled and moved so as to carry the highest quality possible and to see that it was so carried as not to depreciate in value or quality, and to distribute it over as wide a territory as possible, freight rates considered, in order to get as much money for it as possible; that it would naturally enable Swift & Company to pay higher prices for the live stock available for purchase in the territory, and it would naturally follow that they could pay more for the live stock and do a bigger business; that it has been his duty to get as much live stock as possible to operate the plant on a satisfactory basis; that in order to do so, he has bought live stock in Florida, Montgomery, and Nashville; that he has invaded any territory where he figured live stock could be bought successfully, taking into consideration the time it would be on the road in transit to the plant and the prices they would have to pay.

That in 1919 they had the highest point on the market for several years in live hogs and live cattle, the hog market broke sharply during the winter of 1919 and the 1824 prices of the other commodities produced by the farmers was advanced sharply; that the farmers figured that they could not afford to raise hogs at prevailing prices with the proportionate cotton demand down there. The prices of cotton went up and the prices of hogs went down. The price of peanuts, which is the principal hog feed, got up to unheard of prices; that the peanuts are usually ready for the hogs to start grazing and feeding on in the late summer; that the hogs commence to move to market generally in the late fall and early winter, and the fact that production was decreased had a tendency to make the hogs run over a shorter period, and naturally they had less time in which to buy hogs than formerly when the farmers paid just as much attention to the hog production as to any other crop he produced; that there was a sharp falling off in the production of hogs, commencing in the winter of 1919 and extending over a period of about a year and a half; that it takes about a year for a farmer to get into the hog business so as to have the hogs available for market.

Cross-Examination.

That he left Andalusia for Montgomery May 2nd; that temporarily he is in charge, in addition to being plant man-

ager of Andalusia plant, of looking after the selling territory of 12 branch houses of Swift & Company which usually carries a title of District Manager; that the salesman who makes his headquarters at Andalusia under the Montgomery branch of Swift & Company, takes orders for Andalusia product and Western products manufactured by Swift & Company; that the orders for Andalusia products are filled at the Andalusia plant and orders for western products at the Montgomery plant; that orders are taken by salesmen under
1825 the supervision of the Montgomery branch and turned over to the Andalusia plant to be prepared and made ready for delivery; that cars are shipped from Andalusia to Montgomery sometimes two or there times a week; that the most they ever had in the sales department at Andalusia was seven salesmen and one relief man; that when the car routes out of Andalusia were broken up two salesmen were transferred to Swift & Company, Pensacola, and four to Montgomery; that Swift & Company cannot afford to have hog buyers attend all the co-operative sales, because there are so many sales and they just operate on an average of about four months; that the buyers attend the sales if they are in that locality.

Redirect Examination.

That the reason the car routes were discontinued and the territory given to the branch house was that he could see that they were going to have fewer hogs to kill and that operating the car routes would necessitate bringing in more western product into the territory and figuring the freight rates applying from western plants to Andalusia, and comparing these rates with Montgomery and Pensacola, where Swift & Company maintains branches, he found that they would have money by bringing the western products to Montgomery and Pensacola; that the difference in freight rate averaged nearly 1/4c per pound.

1826 Examiner Sadler: The witness will be excused.

(Witness excused.)

H. H. McKEE was thereupon recalled as a witness, and having been previously duly sworn, testified further as follows:

Cross-Examination by Mr. Haycraft.

Q. Mr. McKee, have you consulted the invoices and prepared a statement showing the various prices requested in my question awhile ago?

A. Yes.

Q. What has been the result?

A. The result is we have an invoice out of each month as indicated by the statement, which shows from 1917, November 1817 until July 1921, that dry salt bellies was worth 30 cents, which was the maximum in 1917, and it had reached a minimum of 10¾ in May 1921. It further shows that lard on the tierce basis reached a maximum of 33½ during May 1919, and it reached a minimum of 9⅜ in May 1921. It shows that S. P. regular hams reached a maximum of 30⅝ in May 1920, and a minimum of 17⅜ in May 1921. Dry salt New Orleans shoulders reached a maximum of 23½ cents in August 1919, and on the last sale quoted,—and a minimum of 17 cents in May 1918.

Mr. Horton: You have got it stated backwards.

The Witness: Yes sir, it is stated backwards.

Q. You might attach it as an exhibit, I think.

1827 A. You might attach it as an exhibit.

Q. Did you prepare this statement yourself, or did you have clerks to prepare it?

A. It was prepared by clerks.

Q. What were the instructions given to them?

A. To go through the invoices, picking out four months, that is, picking out four months, taking November, 1917, and taking January, May and November of 1918, and January and May and August and December, 1919, and January, May, August and November, 1920, and January, May and July of 1921, we instructed them to take out the binder covering the invoices for these months and to turn through and to pick out at random invoices to get the price of lard, tierce basis, and dry salt clear bellies, and S. pickled regular hams, New Orleans dry salt shoulders.

Q. Did you instruct them as to the grade of the hams to pick or whether this is also the grade of the medium Dixie ham?

A. It was the grade of hams, the volume shows that ninety-five per cent was the same grade of hams on which we got these prices.

Mr. Haycraft: Mr. Examiner, I will object to the correction, if necessary, at later date, and I wish to offer this as an exhibit in the case, this statement prepared by the witness.

Mr. Horton: No objection.

Examiner Sadler: The statement will be received in evidence and marked Commission's Exhibit No. 199.

(The statement was thereupon received in evidence and marked Commission's exhibit No. 199.)

For page 4130 see abstract page 3668.

1828 Mr. Taylor: Mr. Examiner, I wish to state at this time that if the respondent wishes to offer the papers which were marked "Respondent's Exhibits B-24, 25, and 26" for identification, last night, representing the purchases of live stock made over the periods mentioned, as to each exhibit, together with the pages from the control book, B-17 for identification, representing the sale for the previous month, or two months, that I will have no objection to their being received as exhibits in the case; but I wish to object to either a selected list of those purchases, or to a summary, which must more or less represent conclusions of the party preparing the summary. It is my position that the Commission or Court are entitled to have all those facts, and draw their own conclusions; therefore, I wish to make this statement at this time, so that counsel may have it before him before we adjourn from this point.

Mr. Horton: I would like to examine Mr. McKee.

Examiner Sadler: Very well.

H. H. McKEE was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. Mr. McKee, since you previously testified Respondent's Exhibit No. 28 has been corrected, so that the average live cost of the hogs purchased in July, 1917, is now

1829 $13 instead of $14.47. Would that fact make any difference in your judgment that the Andalusia Packing Company would not have been able to have operated successfully?

Mr. Taylor: As I understood this testimony is all subject to the arrangement we made yesterday?

Mr. Horton: I think it was that all testimony taken should be subject to objections, and considered under objection as to relevancy and incompetency.

Mr. Taylor: Of course; that is my understand. That is, either party may waive the objection to any particular question and answer he sees fit.

Mr. Horton: Do you understand that our arrangement still continues, and may be terminated by either party upon notice?

Mr. Taylor: It is also my understanding, and I would like to have your view on that, that if either party does not wish to consider the objection as being in force against any particular question asked, or any particular answer made during the time the arrangement is in force, he may waive his objection to that question and answer, by expressly waiving it.

Mr. Horton: Yes, I think that is right.

Mr. Taylor: As a later period, any time before the submission of the case.

Mr. Horton: Read that?

(The statements made just above by Mr. Taylor were read.)

Mr. Horton: As the stenographer has read it, that is not quite my understanding of it.

1830 Mr. Taylor: What is your understanding of it?

Mr. Horton: My understanding is this: That the evidence is to go in, with the understanding that either party may later take up and affirmatively move to exclude any evidence upon the ground that it is not competent or material, and that for the purpose of the motion so made, it shall be deemed that the objection to the question was seasonably made.

Mr. Taylor: Yes.

Mr. Horton: Please read the last question.

(The reporter thereupon read the last question above.)

A. It would not.

Q. Mr. Williamson, whether or not dry salt bellies and whether dry salt bellies, and dry salt bacon bellies are the same product?

A. It is, yes, sir. Dry salt bellies, and dry salt bacon bellies are of the kind of cut where one is sold as it comes direct out of the salt cure as a dry salt belly, and the other is taken out of the salt cure and soaked for a period of hours and

then placed in the smoke-house where it is smoked into the finished product, and then is termed a dry salt bacon belly, but originally it was a dry salt belly to start with.

Q. Whether or not the dry salt bellies and dry salt bacon bellies are seasonable products; that is to say, whether or not they sell at certain seasons of the year, and do not sell at other seasons of the year?

1831 A. Very seasonable throughout this section. As I stated in the previous testimony, it shows our heaviest sales starts along in August, maybe the first part of August, or the latter part, and ends with the first cold weather of the season; that this period covers the time when the meats killed by the farmers has been exhausted, and that they have to rely practically entirely on the packing house meats, as dray salt bellies and dry salt bacon bellies is one of the principal pork cuts sold at this time of the year on account of the weather conditions which are very hot, and it is not practical to sell any quantities to speak of of fresh meats, which are highly perishable, and the result is that the August sales, during the period starting the 1st of August, and going as a usual thing to the middle of November, is very heavy on dry salt bellies and bacon bellies, and smoked ham and pure lard.

Q. Now, whether or not in your experience as a packing house man, you have found the prices of these two products to increase as the season comes on?

A. Yes.

Q. And the demand grows?

A. Yes, sir. My experience has been on these particular cuts, during the period I mentioned, the demand is very strong and the result is the prices strengthen up, and that comes about by the fact that a large per cent of the dry salt bellies and bacon bellies sold beginning about the 1st of

1832 August, and ending about the middle of November, have been accumulated in the period of the winter kill, which in some cases starts in November, and ends the latter part of March. These two particular products, namely, dry salt bellies and bacon bellies, are carried in our cellars from one winter's kill over until the next fall, when the demand is the keenest for them, and it is perfectly reasonable to know that these meats are carrying out a continuous shrinkage from the day they go into the cure until they are actually disposed of and carrying a charge for refrigeration, things which must be taken into consideration, when you arrive at the selling price of these two particular cuts during the fall, or a

period of eight months since they were first put in the cellars, —take the expense into consideration. It is also a reasonable fact to consider they will sell in relation a little higher than what the present hog market might be during that period of August until November.

Q. Now what is the peculiarity about this section of the country that makes these products in demand, other than the reasons you have already given, if anything?

A. Our dry salt bellies as it has been the case consist of the lighter weight bellies, and they are given careful attention in regard to the curing and the smoking process and makes them very desirable, the dry salt belly or bacon belly, when it gets on the market, for the fact that the bellies
1833 which go into our dry salt cellar are bellies, which if they were not soft and oily, sixty per cent, or I will say forty per cent, would go into first class bacon, namely, Premium bacon, the leading brand sold on the market, but on account of being soft and oily and not suitable for this fancy bacon, they have to go into the dry salt cure, and so far as our experience goes that is the most suitable way to dispose of it.

Q. Let me direct your attention to the months in which the average retailer throughout this section handles that product; I will ask you to state what is the peculiarity of the trade?

A. The reason that dry salt and bacon bellies are in such demand is because it is the only single product sold in the way of the pork product or pork cut that the agricultural grocerymen or the groceryman at the cross-roads could buy in hundred-pound lots and throw on the shelve in the back end of the store and let it lay there during a period of two or three weeks, and at the end of the two or three weeks sell that product, and he can sell that product in perfect condition. That is not true with smoked hams as they are cured in sweet pickle, and more easily become decayed or contaminated with skipper flies, or become rancid, and that is not true with the fancy hams cured also in the sweet pickle. As we all know, it is impossible for the average merchant through this section of the country to put in or buy any fresh meats outside of the winter season, as they are a long
1834 distance from the ice plants, and they have no conveniences in order to get ice, and they have to buy a meat product which will stand the weather conditions, and the conveniences they have to take care of the pork, and on

account of the dry salt bellies, dry salt bacon bellies being meat which would withstand these conditions, makes it the one particular cut more in demand. It would be true of any other dry salt cured meat. On account of the dry salt belly being the cream of the dry salt cured meats, and being the most practicable cut of the hog to cure into dry salt, naturally it makes the volume on the dry salt bellies heavier for that reason.

Q. Now, whether or not the Andalusia Packing Company had any dry salt bellies or dry salt bacon offered to the trade during the seasonable period in 1916?

A. The records show from the beginning of the Andalusia Packing Company up until November 1st, there was approximately only eleven thousand hogs killed by the Andalusia Packing Company. Taking into consideration that they could have possible put on the market during October some of the bellies which were killed,—that is some bellies from the hogs killed,—the latter part of September, on the main-out of the total hogs killed by the Andalusia Packing Company only twenty per cent of the hogs were killed during the period where it would have been possible for the dry salt meat to have been cured, and reach the market during the time for which there is a demand for this particular cut, the time
1835 the demand for this particular cut is in season. The records also show that eighty per cent of their hogs killed during the time, for the period showing the killing, was killed from October 1, 1916, on up until they ceased operation, and Swift & Company taken it over. This was July, and it was just the beginning of the season when dry salt meats sell freely in this section of the country. For that reason all bellies, dry salt bellies and dry salt bacon bellies, disposed of by the Andalusia Packing Company was disposed of during the off season for this one particular product, and for that reason as we have found to be case in our experience, if we attempt to move a large per cent of the dry salt meats during the off season, we have to do it on a price proposition. That is not the case during the period when the demand for this particular cut is at its height.

Q. How long does it take to cure dry salt bellies?

A. One day and a half to the pound; about the average weight of the dry salt bellies, average around fifteen pounds, and that would be an average of anywhere from twelve to thirty-five pounds I might hmave the average weight a little less. I would say on second thought, it would be nearer

eighteen pounds. That is about the average weight, which would mean the minimum cure age on the average would be around twenty-seven to thirty days.

Mr. Horton: That is all.

Cross-Examination by Mr. Taylor.

1836 Q. The demand for this salt cured meat begins as soon as the hot weather comes, does it not; then gradually grows as the season advances?

A. With home cured meats by heavily salting it, it can be carried on for the first two or three months of the hot weather but it cannot be carried through the entire summer; it all depends on on the condition of the spring. If we have an early spring season of hot weather, it would mean that the farmers throughout the section here would run out of their home cured meat much earlier.

Q. If they did not have home cured meats, it would mean a greater demand for salt cured meats here, wouldn't it?

A. Yes, sir.

Mr. Taylor: That is all.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

1837 W. A. DAVIS, called by the respondent as a witness at Andalusia, Alabama, July 28, 1921, testified in substance as follows (pp. 4201-4204):

That he previously testified in this case; that he was employed by the old Andalusia Packing Company in 1916 and 1917 as bookkeeper; that the entries made in respondent's exhibit #B-17 for identification were supposed to have been made the same date as shown or probably the next morning; that the ink figures on the page under date of July 12, 1917 are in his hand writing; that the figures 93 in the column designated "Number hogs," and 13870 in the column designated "Pounds" and $1967.84 in the column designated "Amount" are in his handwriting; that the pencil notation at the bottom of the page is not in his hand writing; that by looking at the footing he could see that the figure 13870 was not taken into consideration in making this footing; that on page 538 of the controlling book where the figure 13870 has been

brought over in pencil, these figures are not in his hand writing; that respondent's exhibits B-22, B-27, B-28, B-23, B-29, B-10, B-21, B-20, and B-19 all for identification, and the book marked "Commission's exhibit A-20" for identification were all used by the Andalusia Packing Company.

1838 OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE FEDERAL TRADE COMMISSION.

Docket No. 453.

In the Matter of

Federal Trade Commission

vs.

Swift & Company

At Birmingham, Alabama.

Date August 3-4, 1921.

Pages 4205-4542.

Sidney C. Ormsby Company
Official Reporters
18 Vesey Street, New York.

1840 Docket No. 453.

Birmingham, Alabama, August 2nd, 1921.

Met pursuant to adjournment from Andalusia, Alabama. 10:00 o'clock A. M.

Before:

Clarence T. Sadler, Examiner.

Appearances:

Messrs. A. N. Taylor and E. F. Haycraft, care of Federal Trade Commission, Washington, D. C., representing the Federal Trade Commission.

Mr. Frank L. Horton, care of Swift & Company, Chicago, Illinois, representing the respondent.

Examiner Sadler: The hearing will come to order. Are you ready to proceed, gentlemen?

Mr. Horton: Mr. Examiner, I find that I will need another day here to get my witnesses up and have them ready to testify. I really believe that we will save time by adjourning until tomorrow. At that time I will be ready to proceed without interruption.

Examiner Sadler: Is there any objection that we adjourn until tomorrow?

Mr. Taylor: Of course that is up to Mr. Horton; he is putting in his case.

Examiner Sadler: Unless there is some objection we will adjourn until tomorrow morning, then, at ten o'clock.

(Whereupon adjournment was taken, at 10:05 o'clock A. M., August 2nd, 1921, to 10:00 o'clock A. M., August 3rd, 1921.)

1841 MR. E. L. SAUNDERS called as a witness for respondent at Birmingham, Alabama, August 3, 1921, after having been duly sworn, testified in substance as follows (pp. 4206-4253):

That he is manager for the Cudahy Packing Company of Alabama, and has been for about 23 months and has been connected with the Birmingham Branch of Cudahy Packing Company since 1915; that he has been familiar with the Birmingham market, off and on, since 1908, and continuously since 1915; that he first began as a salesman for Armour & Company in 1908 and then with Swift & Company and then with Cudahy Packing Company; that for a short time he was with Jacob Dold Packing Company, from February to October, in 1917.

When asked by the counsel for respondent "How do you find competitive conditions upon this market," Mr. Saunders answered, "Just at the present time they are very keen; We found it that way all this year"; that it has been that way for the past three years; that as well as he can remember they did not have as much competition in that market as they have now; that there was good strong competition in 1916 and 1917, but not as much as now; that it has been becoming stronger in the last three or four years; that since 1915 there have been other packers and brokers continually coming into the market, and this has caused com-

petition to be stronger all the time; that at the present
1842 time it is much stronger than it was in 1915; that he remembers when Mr. Allen handled the account of the Andalusia Packing Company; that he remembers when Swift and Company bought out that plant.

The counsel for the respondent asked the question, "Now in your judgment has that had any effect upon competition, that is, if the purchase of the plant by Swift & Company had any effect upon competition, what was the effect?" To which the witness replied, "It has been stronger since Swift & Company had it, been keener competition"; that Swift & Company have gone out and sold trade that Mr. Allen did not call on; that they have spread out considerably; that Swift & Company has offered Andalusia meat to more people than Mr. Allen did; that he would say 50% more; that Mr. Allen confined his sales to the largest markets in the center of the city; that Swift & Company offers the meat in the same section of the city and covers the entire Birmingham district.

That the following concerns are his competitors: Swift & Company, Birmingham Packing Company, Evansville Packing Company, Wilson & Company, Morris & Company, Armour & Company, E. P. Allen & Company, Hormell & Company, Inman Packing Company, St. Louis Independent Packing Company, Robinson & Company; that they handle fresh meat and provisions; that the Iowa Packing
1843 Company is represented by Mr. Allen; that Hoffman and Company of Cincinnati, he believes, is represented by Mr. W. M. Duke; that Kingan & Company was represented by Robinson & Company; that J. Decker & Company is represented by Mr. Allen; that Rath Packing Company was represented by W. M. Duke & Company until lately; that the Skinner Packing Company was represented in Birmingham until lately; that Oscar Mayer of Chicago were represented in Birmingham until a month or so ago; that the Cincinnati Abattoir Company is represented in Birmingham by Connell & Baldwin; that the Corn Belt Packing Company have been in the Birmingham market, but they are not represented there now; that the Newhoff Packing Company of Nashville, Tennessee is represented by the Inman Packing Company; Cox and Gordon are brokers in the Birmingham Market; that the Guggenheim Packing Company have been represented in Birmingham, but are not at the present

time; that he never saw any of the product of the East Side Packing Company of St. Louis.

That in 1916 and 1917, Swift & Company were represented in Birmingham with a branch house carrying a full line of fresh meat and provisions and packing house products; that Armour & Company had a branch house the same as Swift & Company, carry a full line; that the Cudahy Packing Company was represented by a branch house and carried a full line; that Morris & Company was represented by a branch house and carried a full line; that Wilson & Company
1844 had a branch house carrying a full line; that there were firms who have been on the market continuously for many years; that the Birmingham Company was in Birmingham in 1915 and has been there ever since, that it has a packing house outside the city and a branch house up town; that E. P. Allen has represented various packers in Birmingham since 1915 selling both fresh pork and provisions.

Q. Now, Mr. E. P. Allen, has he represented various packers in this market continuously?

A. Since 1915, yes sir, as well as I can remember, it is along about that time.

Q. Has he sold both fresh pork and provisions?

A. Yes, sir.

Mr. Horton: (To Mr. Allen who was present) Is that right, Mr. Allen?

Mr. E. P. Allen: Yes, sir.

Mr. Horton: You have always handled fresh pork?

Mr. Allen: I did not handle it up until 1916, fresh pork, 1917—1916, too.

Mr. Taylor: That is Andalusia pork?

Mr. Allen: Yes, sir.

Mr. Horton: Have you handled fresh pork from that time down to date?

Mr. Allen: Yes, sir, with the exception of two or three months after Andalusia quit me.

1845 Mr. Horton: What month in 1916 was it you started to handle Andalusia pork, Mr. Allen?

Mr. Allen: September.

Mr. Horton: Didn't you do a lard business almost exclusively at first?

Mr. Allen: No, began fresh meats right from the start; the business right from the start was not as heavy as it was later on, but I began handling it right from the start. It probably was not the first car, now, I don't mean to say

that; I might have handled one or two cars of lard, but it came right along about the same time.

That the Iowa Packing company has been represented in Birmingham since 1915 and since 1917 they have been bringing in fresh meats; that since 1915 they continuously sold smoked meats and provisions; that the Krey Packing Company in St. Louis had been putting provisions in the Birmingham Market during the past four or five years through brokers.

That the St. Louis Packing Company had lately been selling a great deal of fresh meat here, also provisions; that prior to this year the witness thought they had sold but little fresh meat; that when they were not handling fresh meat, they did handle smoked meats, provisions and lard. by provisions he meant dry salt meats, hams and bacon.

That the Hoffman Packing Company of Cincinnati had been selling provisions in the Birmingham market for
1846 some years past—back as far as the witness could remember; that the witness did not remember their sending fresh meat to this market.

That the Skinner Packing Company has been in the market since 1915 selling mostly provisions and fresh meats for just a short time; that this concern has been coming into the market until three or four months ago when they discontinued.

That the Hormell Company have been represented in Birmingham until the past year by brokers; that they now have a branch house selling full line; that prior to placing a branch in Birmingham they sold fresh meat and provisions for the past three or four years through brokers; that they were in Birmingham in 1916 and 1917.

That Kivgan Company were represented in Birmingham in 1916 and 1917 and were selling provisions through brokers; that only once or twice have they brought in fresh meat.

That J. Decker of Mason City has been represented by brokers in Birmingham for the past several years, including 1916 and 1917, selling both fresh meat and provisions; that the Rath Packing Company, Waterloo, Iowa, were represented by Brokers in 1916 and 1917, and continuously ever since, selling mostly provisions and some cars of fresh meat.

That Oscar Mayer have been represented in Birmingham by brokers selling provisions mostly for five or six years;

1847 That the Cincinnati Abattoir Company, Cincinnati, Ohio, is represented in Birmingham by brokers selling provisions mostly; has been in Birmingham for several years, including 1916 and 1917;

That the Corn Belt Packing Company, Dubuque, Iowa, has not sold very much stuff in Birmingham; that it is just for the past two years that they have been selling anything at Birmingham, as well as he can remember.

Mr. Horton: Do you handle that account, Mr. Allen?

Mr. Allen: Yes, sir.

Mr. Horton: How long have they come into the market?

Mr. Allen: We started about the time they first began operating, about two years ago, handle in carloads.

That the Evansville Packing Company was first represented in Birmingham in 1908, later discontinuing their branch and then coming back into the market and opening the branch in 1916, and has since been running a branch house, selling both fresh meat and provisions, the full line; that the Newhoff Packing Company of Nashville has been represented in the Birmingham market for the past two years. The Inman Packing Company represented the Newhoff Packing Company of Nashville, but the Inman Packing Company carry a full line of meats and provisions. That Cox and Gordon are represented by brokers and sell mostly provisions; that they have been here for the past eight or ten years.

That for the past five years a number of these pack-
1848 ers come into Birmingham in the winter time and sell fresh meat, but in summer time they go away from these markets because of the hot weather; the have to bring the stuff into Birmingham in cars and they have no place to carry stocks and therefore they were taking chances on bringing it in here and delivering it in the summer time. That business is not as good in summer time on fresh stuff as in the winter time; that as soon as the trade picks up and gets brisker in the fall, these people come back into the market; that trade on fresh products in the winter is always better, it can be handled easier in the winter time; that when the trade begins to increase in the winter these brokers begin to sell a great deal of stuff for the packers who do not have branches in Birmingham; that when there is a demand for meat in the Birmingham market, various packing houses send meat to that market to take care of the demand.

That he feels that he is familiar with the market conditions in Birmingham for the past six or seven years; that from his experience he is able to give his judgment upon how many pounds would be consumed in the City of Birmingham and the suburbs, and by fresh pork he means fresh pork cuts or any parts of hogs that is sold fresh, including fresh and frozen; that in his estimation in the neighborhood of 18 to 20 million pounds of such pork are consumed a year; that the consumption was less in 1916 and 1917; that there
1849 has been probably a 10% increase since that time because the city has grown some; that there is considerably more smoked meat and dry salt meats and lard sold in that territory than fresh meats; that he finds about 25 or 30 brands of lard in that territory.

Q. Have you ever known of Swift & Company doing anything in this market to restrain or suppress or lessen competition?

A. Why, they have increased competition; that is, their competition has been keener for the past year or two—they have been stronger competitors.

Q. That is, the Cudahy Packing Company find them to be stronger competition?

A. Yes, sir.

Q. From what time do you date that?

A. Well, since they have taken over the Andalusia plant they have sold a great deal of southern pork cuts here.

Cross-Examination.

Q. Now, on your direct examination you stated that competition had been very keen for the past three years; when would you fix that time as commencing, the period of this keen competition, when did it commence?

A. I could not fix any particular time; being continually increasing all along.

Q. Do you mean increasing in all respects or increasing in some respects, increasing as to all meats or increas-
1850 ing as to some meats?

A. Increasing in the full line of packing house products.

That there are more now in the markets selling meats than there were three years ago; that the Cudahy Packing Company in 1916 and 1917 did not sell soft or Southern pork; that Swift & Company prior to acquisition of Moultrie Pack-

ing and Andalusia Packing Company did not sell soft or Southern pork; that the Birmingham Packing Company did sell soft and Southern pork in 1916 and 1917; that the Andalusia Packing Company was selling soft and Southern pork in Birmingham in 1916 and 1917; that the Moultrie Packing Company was represented by a broker in Birmingham in 1916 and 1917; that the Evansville Packing Company when it opened its branch in Birmingham in 1917 handled corn fed stuff; likewise, Wilson and Company, Morris and Company, Geo. A. Hormell & Company, handled western pork in 1916 and 1917; that he does not know whether Armour started to bring in southern pork at that time or not; that Wilson & Company began slaughtering soft pork in 1917 and Morris and Company had a plant at New Orleans and were selling some soft pork products in Birmingham; that neither of these concerns are selling soft pork in Birmingham at the present time; that within the past five months Armour
1851 and Company have been selling soft pork in Birmingham; that he understands that Armour has closed its Tifton plant; that Cudahy Packing Company are not handling soft pork; that E. P. Allen Company is not handling soft pork at the present time; that Inman Packing Company has sold some soft pork during the past two years; that the St. Louis Independent Packing Company was handling Western Pork; that Robinson & Company, Iowa Packing Company, Krey Packing Company, Kingan Company, J. Decker Company, Rath Packing Company, Oscar Mayer, Cincinnati Abattoir Company, Corn Belt Packing Company, Newhoff Packing Company, Cox & Gordon, Guggenheim Packing Company, John Morrell Company, have always handled the Northern and corn fed pork products and have never sold soft pork.

That in his estimation of 18 to 20 million pounds of fresh pork sold annually in Birmingham, he had in mind the amount sold in 1920 in the city of Birmingham, including, Ensley, East Lake Park, Avondale, Woodlawn, N. Birmingham, Pratt City, Thomas, Boyles, and Bessemer, and that it included sales made to corporations buying supplies in Birmingham and shipping outside to Mills and factories, including the Tennessee Iron and Coal Company and other large steel mills; that he based his estimation not upon records of any packers or dealers but upon his own judgment, judging from his own sales; that he had no figures from his competitors on which he based his conclusions; that he used his

best judgment as to the total amount of fresh pork his
1852 company had been selling and guess at what every one else had been selling.

Redirect Examination.

The demand for fresh pork is lighter in the summer time than it is in the winter time. That if a packer was going to withdraw from the Birmingham market in the summer time, witness thought it would be during the months of July, August and September.

Witness was testifying on the 3rd day of August.

1853 L. B. WEIL called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after having been first duly sworn, testified in substance as follows (pp. 4253-4265):

That he is manager for the Evansville Packing Company and has been since February 1917; that the Evansville Packing Company has a branch house in Birmingham, carrying a full line of packing house products, including pork, beef and provisions; that he represented the Evansville Packing Company in Birmingham in 1905 to 1912; that he feels that he is familiar with conditions in Birmingham market.

That he was with the Cudahy Packing Company in Birmingham in 1915-16; that the Cudahy Packing Company has a branch house carrying a full line of meat products; that he was in charge of that branch in 1915-16.

When asked the question: "Now, what do you say about competitive business in this market, Mr. Weil, going back to 1915-16-17?" Mr. Weil replied: "Well, we have always had a lot of competition here of all kinds." That the competition now compared with 1916-17, he would say that there were independent packers always more or less coming into the market,—would stay a while and then get out and others would come in and take their places. That he does not know whether there are as many of them in Birmingham now as there were in 1917; that he would say there were just about as many; that he does not think there is much difference.

(Witness then named the packers having branch houses

and described the products they carried substantially the same as listed by witness Saunders Supra.)

1854 In addition to the packers named by Mr. Saunders Mr. Weil named the John Morrell Company, the Sinclair Packing Company, the Chicago Independent Packing Company, Arnold Bros., and the Wilson Provision Company of Peoria, Illinois, as being represented in the Birmingham market through brokers, and named the Alabama Packing Company and the Iron City Packing Company, local packers; that he finds that the packers represented in the Birmingham market are working the trade harder than they were in 1916-17, but not accomplishing as much; that comparing the market in Birmingham now with the market in 1916-17 there is not as much business now as there was in 1916-17; that during 1916-17 business conditions were better; everything was working, labor was employed; they are not at the present time.

That the steel, iron and coal industries are the big industries of Birmingham; that during former years they were all working and now a great many of them are out of work and do not have money to spend; that considerable more meat was sold in Birmingham market in 1916-17 than is sold now.

That he remembers when Swift & Company started to handle Andalusia meats; that in his judgment there was more competition after Swift & Company got the Andalusia plant than before; that he did not come in very close competition with the Andalusia stuff before Swift & Company got the plant; that his information is that the bulk of the

1855 Andalusia stuff before Swift & Company purchased the plant was sold to the larger dealers around town and that his company did not do very much business with those dealers; that most of his business was with the small dealers, who did not buy the southern pork; that Mr. Allen handled the account and did not cater to that class of trade; that Swift & Company now go out to the same class of trade that he does and that he encounters their competition everywhere he goes; that he is up against this cheap pork stuff; that he has been up against it before, and that he supposes Swift & Company offers Andalusia meat everywhere they can sell it; that he thinks there are too many packers in the Birmingham market at the present time.

Cross-Examination.

That there has been too many packers all along; that the elimination of the Moultrie Packing Company and the Andalusia Packing Company did not hurt his Company any; that the Dold Packing Company were doing business in Birmingham in 1916-17 and are not doing business there now; that the John Morrell Packing Company recently stopped; that the Rath Packing Company has been consolidated with some other concern and there is not much of that Company's products in Birmingham; that the Cincinnati Abatoir Company is not in the Birmingham market very much; that the Krey Packing Company is not doing very much business in Birmingham, but he could not say whether they were out entirely; that the Alabama
1856 Packing Company is out of business; that he does not know as to the Wilson Packing Company.

Redirect Examination.

That these outside concerns who shipped their stuff in Birmingham usually go out in the summer time and come back in the winter time; that he would think there was very little difference in the number of packers doing business in Birmingham at the present time and the number of packers doing business in 1916; that there were more in the market until this year when a great many of them left on account of business conditions.

Recross Examination.

That the Andalusia Packing Company was in the Birmingham market pretty good and that the Moultrie Packing Company was never very strong; that after the acquisition of stock of the Andalusia Packing Company, Mr. Allen ceased to handle things and Swift & Company took charge of the sales of that Company.

Redirect Examination.

That he is still meeting competition with Andalusia men through Swift & Company; that he is coming more into competition with it than he did when Mr. Allen handled it.

1857 J. T. HACKNEY called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after being first duly sworn, testified in substance as follows (pp. 4265-4269):

That he is the same Mr. Hackney that testified in this case on March, 1921; that he has been in the retail meat business in Birmingham for about fifteen years; that he remembers buying Andalusia meat from Mr. Allen when he was a broker; that he bought the same kind of meat from Swift & Company; that Swift & Company handled Andalusia better than the old packing company sent it in; that there is competition in the Birmingham market.

When we bought Andalusia meat, we figured on buying it from four to six cents under the Western stuff. Swift & Company give splendid service now, especially recently; you can order anything now and get it in four minutes after you call up.

Cross-Examination.

That he bought Andalusia products very fresh from Mr. Allen; that he would not have bought if it was not fresh.

1858 E. A. COLSON, called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after having been first duly sworn, testified in substance as follows, pp. 4269-4280:

That he is manager of Buehler Bros. Meat Market and has been for the past three years; that he has charge of buying of meat for two large butcher shops, and that he is familiar with trade conditions in Birmingham; that the competition among the meat dealers is strong; that he has dealt with Swift & Company from time to time; that he buys quite a little soft and oily pork from them; that he does not handle as much in the warm weather as he does in the cold weather because there is too much shrinkage; that it does not look as good when it is cut and does not give satisfaction as the corn fed stuff does; that if it was the same price as the corn fed he would not buy the soft pork; that soft pork spoils about

three times quicker than hard pork; that it will not hold up; it deteriorates quicker than corn fed. The he can buy soft pork 2c a pound cheaper than corn fed pork; that sometimes the soft pork is the same price as the corn fed, though generally on an average it is 2c a pound cheaper; that he can buy it for 2c a pound cheaper in the summer time, sometimes as much as 4c a pound cheaper.

That Swift & Company always give him pretty good service; that he never bought soft pork from Mr. Allen when he was handling the Andalusia account; that all the soft pork he bought was through Swift & Company, the Birmingham Packing Company, the Inman & Company or Armour & Company, once in a while.

1859 *Cross-Examination.*

That at the present time he is not buying soft pork from any one unless he has to because it is too warm to handle it; that he has bought from the Birmingham Packing Company, Armour & Company, Swift & Company once in a while; that it would be difficult for him to say from whom he could buy it now because he has not tried to buy any as he does not handle it in the summer time; that he bought some hogs last winter from Armour & Company which were killed in Birmingham at the Birmingham Packing Company plant; that once in a great while he could buy soft pork and hard pork at the same price; that is when pork is in greatest demand and the packers run out of the hard pork and he pays practically the same price for soft pork; that this would be usually in December, January and February; that he would not buy soft pork if he could get hard pork at anywhere near a reasonable price; that if soft pork would be 5c or 6c a pound less and he could use it up today or tomorrow a man would be foolish to turn it down and buy hard pork, but if he cannot the shrinkage is so much more that it would not pay him to pay the price for soft pork that he pays for hard pork.

That the first soft pork he ever handled was in 1918 when he first came to Birmingham and he supposed that he purchased it from Swift & Company.

1860 R. R. MORRIS, called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after having been first duly sworn, testified in substance as follows (pp. 4281-4285):

That he is in charge of the grocery business of Yeilding Bros. and buys the meats for the store which is located in the down-town section of Birmingham; that the store has five store rooms besides a wholesale house; that he is familiar with trade conditions in the meat business in Birmingham; that he was buying for Yeilding Bros. for about sixteen or eighteen months.

That he finds competition among the meat dealers very keen; that they are all anxious for business; that he has handled some of soft and oily pork of the Andalusia Packing Company; that since he has been with Yeilding Bros. he has not handled Andalusia meat, but before he went with them he worked for W. S. Brown for ten years and he handled some of it there; that the objection of some of the customers would be on account of it being oily and soft; that it would not stand up and the same would apply to the lard; it would not stand up like western lard.

Cross-Examination.

That he has bought Andalusia meat for his own personal use and has found it to be very good meat except that it is too oily and soft; so far as flavor is concerned, the flavor is good.

1861 J. M. BROWN, called as a witness by the respondent at Birmingham, Alabama, on August 3, 1921, after having been first fully sworn, testified in substance as follows (pp. 4286-4290):

That he is engaged in the retail meat business in the city of Birmingham a little south of the center of the city.

That he remembers buying some Andalusia meat from Mr. Allen back in 1917; that he has been buying the same class of pork from Swift & Company since they bought the plant; that the meat is put out in better shape now that it was then;

that it is frozen now and comes fresh and harder and keeps longer, but it does not keep as good as the corn fed does; that it is good eating meat when it is fresh; that it is better trimmed, as he remembers.

1862 W. B. EMOND called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after having been first duly sworn, testified in substance as follows (pp. 4290-4292):

That he is engaged in the grocery and meat business at Magnolia Point, Birmingham, Alabama, and has been located there for about five years, having been up there in 1916; that he remembers buying Andalusia meat from Mr. Allen; (peanut fed pork) that his trade prefers the corn fed meat to peanut fed pork according to his experience.

1863 J. H. GREEN called by the respondent as a witness at Birmingham, Alabama, on August 3, 1921, after having been first duly sworn, testified in substance as follows (pp. 4293-4303):

That he is local manager for Wilson & Company in Birmingham, Alabama; that he has been in the packing business for about twenty years; that he was manager for Wilson & Co. in 1915 and 1916 at Birmingham, and Morris & Company, Chattanooga, Tenn., until March 1920, when he became branch manager again for Wilson & Company at Birmingham; that he has been in the Birmingham market about three and a half years; a year and a half since March 1912, and two years in 1915 and 1916. That from his experience Birmingham is the most intensive competitive point he has ever worked in; that he has worked in Jacksonville, Savannah, Macon, Birmingham and Chattanooga.

(Witness then listed his competitors operating branch houses and represented by brokers in Birmingham, which is substantially the same as given by witness Saunders Supra.)

That he was not in Birmingham when Mr. Allen was handling the account of the Andalusia Packing Company; but that Mr. Allen is not now an active competitor in the Birmingham market with the accounts he handles. Mr. Allen

is now selling fresh pork and a line of provisions and has refrigeration facilities. That from his experience in the market he would estimate there is about two car loads of
1864 fresh pork consumed a day, or about seven hundred carloads of fresh pork consumed in a year in Birmingham, or about eighteen or twenty million pounds a year; that he would judge there were thirty brands of lard sold in the Birmingham market. That the volume of smoked meats and provisions was about 50 per cent as much as fresh pork, or about nine million pounds of smoked meats and eighteen or twenty million pounds of lard a year, possibly more.

That he finds Swift & Company salesmen selling the same trade that he is selling, offering a full line of packing house products, and he believes including Andalusia pork.

That at the present time competition is not as keen as formerly because trade has declined to buy from the brokers who ship into Birmingham without refrigeration facilities. That for instance the St. Louis Independent Packing Company is doing only about twenty per cent of their winter fresh pork business at this time; that they do more business in the winter than they do in the summer.

That he does not think that the larger packers with facilities are affected by the seasons as the smaller packers without facilities; that handling goods from cars only is a little bit dangerous in the extremely hot weather; that he finds more demand for pork products in the winter time than he does in the summer time, with respect to fresh products, but he sells more provisions and cured meats in the summer than he does in the winter; that he finds that Swift & Company are active competitors.

1865 E. F. BLUMELY called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after having been first duly sworn, testified in substance as follows (pp. 4304-4334, 4349-4359, 4382-4398):

That he is salesman for Swift & Company in Birmingham, Alabama, in the territory east of 20th Street out into the suburbs as far as Irondale, Gate City and Trussville; that he entered the service of Swift & Company in July 1914 in charge of the fresh meat department in the branch house; then in July 1915 he went on the road; that he was covering the same territory in 1916-17 as he is now. At that time he had about

one hundred and eighty customers; that he finds that about three per cent of these customers Mr. Allen sold to; that he is the only man in the employ of Swift & Company who was selling meat in Birmingham in 1916 and 1917.

Cross-Examination.

That the names of his customers doing business in July, 1917 are as follows:

Palace Market, Five Points and 20th St.
D. Costiglia, 25th Street and Avenue F
N. George, 27th Street and Avenue F
H. J. Clark, Avenue E and 27th Street
Smith-Taylor (now out of business) 28th Street and Avenue G
J. E. Davis, (now dead, place is run by P. L. Williams) about 2900 Avenue E
F. E. Meyer, 30th Street and Avenue F
1866 Corey & Falkner, Avondale
J. G. Dickerson, Avondale
W. J. Bond, Avondale
Avondale Grocery, Avondale
Avondale Cafe, Avondale
Pharo Grocery,
Ezell Bros.,
Avondale Mills (C. H. Swope)
Charles Megro,
Watson Grocery Co.,
J. C. Steinbauer, Grand Ave. & 15th Street
Lillian Wood, 4300 Georgia Road
Shelby & Company, 50th Street and 1st Ave.
J. W. McGuirk, (now occupied by Hill Grocery Co.) 51st near 1st Ave.
J. H. Shotling, 54th Street
D. S. Boone 52nd Street
J. L. Lawler, Wauhoma Station
Lessman Bros. 49th Street and Georgia Rd.
Wm. Wording, 15th Street near 12th Ave.
W. L. Maollary 53rd Street near 1st Ave.
J. L. Thornton, 55th Street
E. C. Rice, 55th Street
Brown Grocery Co. 55th Street and 1st Ave
J. M. Parton,
Burris & Co., 57th Street and Tidewater Car Line

1867 Woodlawn Mercantile Co., 57th Street and 1st Ave
Mrs. J. M. Ashley, 2nd Ave & 64th Street
Tony Mutlibiono, 3rd Ave. and 63rd Street.
J. B. Vance, 62nd Street and 3rd Ave.
W. Y. Lewis, Tidewater Car Line and 63rd Street
George Hyde, (Warrens Economy Market) Wautoma Station Tidewater Carline
W. H. Mitchell, Wautoma Station
H. A. Bartman, Wautoma Station
E. Canterbury, Wautoma Station
Mrs. J. M. Atkins, 73rd Street and 1st Ave
Sadler Bros., 77th Street and 1st Ave.
Howard College, College Station
Orphans Home, East Lake
C. J. Henry, 83rd Street and Tidewater Car Line
J. A. Goodwin, Terminus and Tidewater Car Line
A. Montano 84th Street and Sloss Ave
J. T. Surratt Roebuck Springs Country Club
Higgins & Turner,
J. D. Sutton, East Lake Park
Griffin Bros. East Lake Park
W. T. Dixon 77th Street and 1st Ave
E. Jenkins, Gate City
T. C. Burgess, Gate City
1868 J. T. Ramsey, Irondale
W. L. George & Co. Irondale
J. W. Holbrook, Irondale
J. T. Mackin (Cash Store) Irondale
Mrs. Montgomery Irondale
George Elkins, 67th Street and Gate City Car Line
Mrs. J. M. Addison, between 67th and 68th Street off Gate City Car Line
L. A. Tynes, Gate City Car Line
E. L. Williams, 48th Street & 10th Ave.
J. W. King, 51st Street & 9th Ave.
W. S. Walker, 50th Street & 7th Ave.
Mr. Kirby, 10th Ave. & 48th Street.
A. Yarborough, 44th Street & 10th Ave.
Mrs. J. W. Parker, 44th Street & 12th Ave.
J. Arnst, 44th Street & 13th Ave.
East Birmingham Market, 44th Street & 10th Ave.
F. W. Smith, 10th Ave. & 46th Street.
L. E. Leffler, 51st Street & 1st Ave. N.
A. M. Wofford, 43rd St. & 10th Ave.

Lee Wright, 44th Street & 10th Ave.
Joe Schilici, 12th Ave. & 44th Street
Frank Selina, 43rd Street & 10th Ave.
Alexander Bros., 36th Street & 10th Ave.
Paul Alexander, 39th Street & 10th Ave.
Joe Graffio, 12th Ave. & 39th Street.

1869 W. E. Vernon, 39th Street near the R. R. tracks
L. H. Smith, Boyles Pike
Russo (address not given)
Charles Morrison, 21st Street & Frisco Tracks
Frank Madona, 21st Street & Frisco Tracks
L. A. Morton, 11th Ave. & 21st Street
W. B. Emond, 10th Street & 11th Ave.
St Vincent's Hospital On the Highlands
Mike Friolla, 23rd Street & Avenue I
Joe Friolla, 29th Street & Avenue F
John DeGesus, 25th Street & 4th Ave.
Sam Branda, 56th Street & 1st Ave. Woodlawn
Pete Mola, 27th Street & Terminal
John Shields 23rd Street & Magnolia Point
Gold Market 2nd Avenue between 24th & 25th Sts
Five Points Drug Co., Five Points and 20th Street
Persian Bakery Five Points and 20th Street
J. C. Robinette, 3rd Avenue & 24th Street
Mrs. Barrett, Boyles
Chanler & Co. Boyles
John Portera, Avenue C & 23rd Street
Craig Grocery Co., Hillside Station
Clinton Smith, Boyles Park, Ingellock
T. W. McCoy, Ingellock
W. M. Wade, Boyles
Dolcito Quarry Co. Tarrant City
George Marcus East Lake
Sloan Bros. Avenue B. & Spring Street

1870 That the names of the customers who compose the 3 per cent sold by Allen are as follows:

Avondale Grocery, E. C. Rice, Shelby & Company, J. G. Dickerson of Avondale and the Brown Grocery Co.; that it was only at the stores named that he ever met Mr. Bauer, salesman for E. P. Allen; that he never heard of E. P. Allen having any other salesmen; that he watches his competitors very closely and does not think that any other salesman but Mr. Allen called on his customers selling goods of the Andalusia Packing Company; that if Mr. Allen's record shows that

he did sell meat to more of these people that it would be proper evidence; that he was just speaking from memory; that he never asked any of his customers individually whether they bought Andalusia meat; that they were all engaged in the retail meat business with the exception of cafes, hotels and bakeries; that he sold the customers named meat, lard, butter, eggs, cheese, glycerine and soap; that all of these customers at some time or another purchased meat products from him.

1871 SAMUEL RITCHEY, calleld by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after being first duly sworn, testified in substance as follows (pp. 4334-4338):

That he is engaged in the retail meat business at 4103 1st Avenue, and has been so engaged since 1915. That he remembers when Mr. Allen was handling Andalusia meat and bought some from him; that he has bought meat from Swift & Company since they have been handling Andalusia meat; that when Mr. Allen handled the account of Andalusia he did not have a freezer; that he has one now. That most of the time he gets Andalusia from Swift & Company; now it is frozen and that is the only way he can handle it because it is so soft; that is all the difference he can see; that he does not see much difference in the way it is trimmed; that he is satisfied with the service Swift & Company gives him.

That there are lots of people in the market trying to sell him meat; that he cannot give everybody that calls on him an order; that there are more people calling on him than he can give orders to.

Cross-Examination.

That there has always been a great many people calling on him selling meat ever since he has been in business; that for his business he likes to handle frozen pork better than unfrozen pork; that for personal use he would rather have it fresh; that the pork Mr. Allen sold him was fresh, but he could not keep it long; that frozen stuff always keeps a little better; that Mr. Allen always got it to him in good shape; that he got good service from Allen.

1872 A. HALZER, called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after having been first duly sworn, testified in substance as follows (pp. 4338-4343):

That he is engaged in the retail meat and delicatessen business in Birmingham at 1826 4th Avenue, and has been so engaged for the past thirty years. That he remembers in 1916-17 buying Andalusia meat from Mr. Allen; that he does not buy that meat now because it did not give satisfaction; that he stopped after Mr. Allen handled it and has not handled it for four or five years; that it would not hold up; that customers would not buy it; that he stopped handling it because it would not hold up and would not keep, did not look nice after it was sliced and the customers would not buy it.

1873 J. A. SNOWDEN called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after having been first duly sworn, testified in substance as follows (pp. 4343-4348):

That he is engaged in the retail meat and grocery business in Birmingham at 50th Street and 1st Avenue for the past twenty-eight or thirty years; that competition is sharp; that a number of salesmen call on him regularly; that he cannot give orders to all salesmen that call on him; that he is offered more meat than he can possibly buy; that he remembers buying Andalusia meat from Mr. Allen; that he did not buy a great deal—some most every week though; that he has continued to buy it since Swift & Company has been handling Andalusia meat; that he believes he has bought more from Swift & Company than he did from Mr. Allen; that he would say from the service that he gets from Swift & Company on pork products, such as pork shoulders and pork loins, they come more uniform in size and closer to average since Swift & Company has been handling it; that the loins are wrapped better; that Andalusia could not give the service that Swift & Company is giving, and that the meat is now more desirable from the market man's standpoint; that he could not remember with respect to trim, but at the present time he has no complaint to make with regard to trimming and the cuts; that when he was buying from Allen, lots of times when he bought

cuts of pork shoulders and pork loins he would find one extremely small and one extremely large to make the proper average weight, one or two small and the next a heavy
1874 one; that they come more uniform now in size; that they did not then, and that when he orders 8 to 10 pounds shoulder and 8 to 10 pounds loins he prefers to have them come that way.

Cross-Examination.

That he never has any trouble buying all the meat he wanted in Birmingham; that he never saw the time when he could buy all the meat that was offered to him; that salesmen have always been after his business since he has been there; that there is no change in this respect so far as he can remember; that it would be impossible for him to tell just how much meat he bought from Mr. Allen and just how much meat he subsequently bought from Swift & Company; that he knows he bought from both of them. That this is his own personal knowledge he is testifying from.

1875 W. B. WALLACE, called by the respondent as a witness at Birmingham, Ala., on Aug. 4th, 1921, after first being duly sworn, testified in substance as follows (pp. 4360-4365):

That he is engaged in the meat and grocery business and has been for nearly three years; that he has been in the meat business in the Birmingham market for about six or seven years; that before he opened his own store he was connected with the Birmingham market & Produce Company; that at one time this company operated five markets in Birmingham; that his market has handled very little soft pork; that he never likes to handle it unless there is a differential of 4c to 6c a pound between it and hard pork; that he does not handle it when he can get hard pork; that competition is stronger than it has ever been before; that the salesmen seem to be more active and more anxious to make sales and are working him harder; that they hang on longer and call more frequently; that some packers have representatives in his place two or three times a day.

Cross-Examination.

The last few weeks salesmen have made greater cuts from the original price than ever before; that he is not familiar with the business conditions when the Andalusia Packing Company was doing business with Mr. Allen.

1876 W. S. MOUGHON called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after having been first duly sworn testified in substance as follows (pp. 4365-4375):

That he is manager for Armour & Company branch house in Birmingham and has been for the past thirty-two years. That competition in Birmingham is the greatest competition in any line of business that he knows of. That he was familiar with the market conditions when Mr. Allen was handling Andalusia meat. That he did not consider the Andalusia meat handled by Mr. Allen and brokers in the market; that it did not bother him in the least. That he considers the competition of Swift & Company handling Andalusia meat harder competition because they get around more, get to the customers and work the trade closer; that competition has increased during the past four or five years; that nearly every packer in the United States is handling stock or bringing cars into Birmingham; that those who do not have branch houses have brokers and those who do not have brokers carry stock or run road cars in and take orders.

Cross-Examination.

Upon cross-examination Mr. Moughon testified that he always has had competition in the Birmingham market since he has been there. That he considers that the Andalusia Packing Company did a very small business in Birmingham in 1916-17; that he does not know how much business they did; that they could only do business for a few months
1877 in the year on account of not being able to get live stock to kill; that he figures that the Andalusia Packing Company possibly sold about one per cent of the amount of pork cuts handled on the Birmingham market; that their shipments to Birmingham were spasmodic; that in some weeks they would ship a car and some weeks possibly two cars—

then they would drop out—that it was a hard matter for him to estimate how much they sold; that he would say possibly they would sell a million pounds of fresh pork and dressed hogs in the course of a year; that he saw very little of their cured meats; but that he saw a good deal of their fresh meats in the trade.

That he did not take much notice of the Andalusia Packing Company until Swift & Company got hold of it; that he knew it would make competition, they would find it harder; that Swift & Company is a larger concern; that he supposed they would enlarge the plant; that they had more money to handle the business—they had a better outlet for the products; that in his opinion Swift & Company would sell twice as much as Allen sold the first year after they got the plant and this continued down to 1919 when all of the business fell off 33 1/3 per cent, but that he would say that there was no falling off to amount to anything in the sales of Andalusia products in 1919 in the Birmingham market.

Redirect Examination.

That the volume of meat any packer is able to put out into the market depends upon the hogs that he gets.

1878 J. L. THORNTON called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, after having been first duly sworn, testified in substance as follows (pp. 4376-4382):

That he is engaged in the business of retailing groceries and fresh meats in Woodlawn and has been so engaged for sixteen years. That he bought some Andalusia meat from Mr. Allen when he was handling the account and that he has been buying some from Swift & Company since they began handling it. That he thinks since Swift & Company has had the Andalusia plant the meat is in better shape than it was previously; that they are in better position to handle meat and it comes to him in better shape; that Swift & Company has a better coolor and that they smoke their hams better, they are better cured; that the hams seem to be better trimmed than they used to be and more uniformly graded.

That in his opinion competition is keen and always has been; that there are plenty of salesmen there and are ready

to sell him anything he wants; that he cannot give an order to every salesman that calls upon him.

Cross-Examination.

That he never saw the time that he could give an order every week to all salesmen calling on him since he has been in business except in war times when the packers did not have the stuff. That he possibly bought three times as much Andalusia products from Swift & Company than he did from Allen. When Swift & Company took hold of the packing house they kept the stuff all the time in their cooler especially
1879 in the winter season. That he prefers Andalusia pork when he can get it fresh, but this kind of soft pork except it is kept fresh all the time cannot be handled to advantage because it will go to the bad so quickly; that he has to have it in small quantities and regularly in order to keep it fresh; that he likes the flavor of it but it will not keep as well as other meat; that the customers did no know where it comes from; that they just know it is pork loin and they know when it is good, and that he offers them pork that he knows they will like.

1880 J. L. THWEATT called by the Respondent at Birmingham on August 4th, 1921, having been first duly sworn, testified in substance as follows (pp. 4398-4410):

That he is the same Mr. Thweatt that testified in this case in Birmingham last March and again in Andalusia last week; that in making up respondent's exhibit #23 he took the actual buying and selling figures, the actual money that was paid for live stock and the actual price Swift & Company furnished product for, and the difference represents profit or loss; that when the Andalusia plant buys a product from some other plant of Swift & Company, it is billed at the wholesale list price of this product, which is made by using the Board of Trade quotations as a basis; that a similar rule would apply from other sources than Swift & Company, it would be bought at the market price; that when the Andalusia plant sold branch houses of Swift & Company, it would sell on the basis of the wholesale price, which is arrived at from the Board of Trade quotations, taking into consideration in making the

price, the quantity and quality of the product involved; that Andalusia Packing Company marketed its products through about fifteen branch houses, the bulk, however, being sold through ten branch houses; that by bulk he meant 90% or 92%; that approximately 900 towns are worked, covered by salesmen who have headquarters at these ten branches; that the idea is to have the salesmen sell the trade in each town they work, on Andalusia products as well as on Western products; that special effort has been made to sell the Andalusia products through these branch houses; that it was personally his job to keep after the Manager who run these branch houses to order Andalusia products and sell it while it is fresh for the best price it will bring; and that in turn
1881 they are required to carry out the same procedure with their salesmen; that he takes this up with the branches every week and with important branches like Birmingham, Montgomery and New Orleans two or three times a week; that he tells them he must have orders for the product; that he realizes it is a special product and must be sold in a restricted territory, and it is up to him, being in charge of the sale of this product, to see that it is given preferred attention just because the territory is restricted; that he takes it up with the managers over long distance telephone, by wire and by letter and makes personal visits; that Andalusia product is harder to sell than the Western product.

Cross-Examination.

That temporarily he has other duties besides looking after the sale of Andalusia product; that since he left the Andalusia plant and went to Montgomery it became his duty to push the sale of Western products as well; that Montgomery and Pensacola are the principal markets for Andalusia product; that they hoped that Birmingham would be the big consuming center for Andalusia product, but he cannot say that Birmingham is the principal point through which the product moves; that they have not been satisfied to make the prices necessary to move this product in the volume they had hoped to offer it, restricting it to this Birmingham market; that a carload of hams was shipped last Fall to Buffalo on consignment and they suffered a loss of $500.00.

Redirect Examination.

That all of these houses are in business to make money and his conclusion is that he had to give as high as 6c a pound concession under the Western pork lists to get them to sell the Andalusia product.

1882 That quality considered, the Andalusia product is sold to the branch houses of Swift & Company at the same price they would sell it to any wholesale concern; that any product bought for Andalusia from Swift & Company would be used in connection with the manufacture of product they put out, like lard and sausage; that they would pay the same price for the product that any wholesale manufacturer would pay; that he has bought lard stearine outside of Swift & Company from Kingan & Company, and the price was arrived at on the Chicago Board of Trade billing; that he assumes when Western pork was brought in to supply car lines operating out of Andalusia, that the same price was paid that any wholesaler would pay.

1883 F. G. BREWER, called by the respondent as a witness at Birmingham, Alabama, on August 4th, 1921, after having been first duly sworn, testified in substance as follows (pp. 4410-4423):

That he is the manager of Swift & Company, Birmingham, branch, and has been manager or assistant manager for 18 months; that for 3½ years prior to that he was assistant to the District Manager; that the Birmingham branch has 8 salesmen, 4 trucks, 3 wagons, 6 automobiles for salesmen, 6 coolers, 3 or 4 thousand cubic feet of cooler space, and employs about 40 people; that there are from 2300 to 2500 possible customers in the Birmingham District; that Swift & Company has between 1100 and 1200 active customers, to which are sold from 2 to 5 bills of goods every 30 days; that it has been the same for the past 4 or 5 years, except in 1918 and part of 1919, when there were more customers due to war conditions and better business conditions; that the Birmingham branch handles and produces and carries a stock of Andalusia products all the time; that it requires a price differential under the Western meat to sell Andalusia product; that that differential is from 2c to 4c; that everyone is required to put forth special effort on Andalusia pork, which

consists of constant prodding of the salesmen, checking up on them, keeping after different customers in his territory, and wherever possible, looking for a new outlet; that the Branch House Department, Chicago, and the District Manager are constantly on their necks to sell Andalusia products; that if they do not get the price they ask, they must sell at a lower price, because it must be moved; that Andalusia product will not keep as long as Western product; that in his judgment Swift & Company does 10% of the pork business in the Birmingham market; that by pork business he includes all pork products, including neck bones, spare ribs, pork
1884 loins, shoulders, hams and backs; that it does not include offal such as snouts and feet; that competition conditions are keener at the present time than they have been in a great many years because there is less consumption and more competing plants on the market.

Cross-Examination.

That it always has been difficult to sell the Andalusia product; that the 2300 to 2500 customers mentioned by witness were customers that are considered eligible to buy in a wholesale way; that some of them do not handle fresh meats in the summer time; that the Birmingham district comprises the whole of Jefferson County, including Bessemer; that the number of customers given was approximate, just an estimate; that the number of customers Swift & Company has included C. O. D. customers and was taken from the statement of the active customers on Swift & Companys books; that some of these customers deal in cured meats only; that some handle fresh and cured meats during the season and cured meats only in the other part of the season.

Redirect Examination.

That Swift & Company handle 4% or 5% of the smoked meat business in the Birmingham district.

Recross-Examination.

That Swift & Company handles from 1,200,000 to 1,500,000 pounds of smoked meats a year; that Swift & Company's per cent of the total smoked meats business testified to is his own private opinion.

1885 F. N. PHILLIPS called by the respondent as a witness at Birmingham, Alabama, on August 4, 1921, and after having been first duly sworn, testified in substance as follows (pp. 4424-4430):

That he is Secretary and Treasurer of the Birmingham Packing Company located at Birmingham, Alabama. That his concern has a plant located at North Birmingham, and a branch house in the city; that it kills both cattle and hogs, and it has been in business for about twenty-five years selling meat products. That the competition in the Birmingham market is as keen as he has ever known and has been for some years.

That soft and oily hogs have been slaughtered at his plant but none are slaughtered there now; that they have not slaughtered any soft hogs in two years; that product is very inferior in quality and is undesirable in looks, and much harder to sell then good firm pork; that he has seen soft pigs and hard pigs handled in the same cooler, and the soft pigs the price from 2c to 3c less than the hard pigs, and the customers would always take the hard ones in preference to the soft; that is, as a rule they would; that he does not think that the soft and oily hogs can be sold as profitable as firm hogs; that his concern had a branch house in New York City and tried to sell soft hogs up there; that they sold quite a few but the business was unsatisfactory and not profitable and they discontinued it.

That he was familiar with the market in Birmingham at the time the Andalusia Company was handling its products and since Swift & Company has been handling Andalusia products.

1886 That he thinks the Andalusia plant operating under Swift & Company's control could offer and has offered more competition than it would under the control of the old Andalusia, for the reason that Swift is established in Birmingham and have their branch and selling facilities, and naturally they could sell more products from the Andalusia plant than the brokers could in the Birmingham market.

That he is familiar with the government specifications which the government passes bearing on pork products; that almost invariably one of the first specifications set out is that hams and soft and oily hogs will be rejected.

That he has never known that Swift & Company did anything to suppress or lessen competition in the Birmingham market.

Cross-Examination.

That he did not think that Swift & Company lessened competition by buying the stock of the Andalusia Packing Company; that he did not notice it in the Birmingham market; that he does not think Mr. Allen's concern is as firmly established in Birmingham as Swift & Company is; that Swift & Company would go out and sell more of the products than any broker here; that it is true when Swift & Company bought the stock of the Andalusia Packing Company Mr. Allen was compelled to stop handling the Andalusia product, and that the competition which previously existed between Swift & Company and E. P. Allen Company, growing out of the sales of Andalusia pork by E. P. Allen Company had ter-
1887 minated. That he thought Mr. Allen took on another account at that time—he could not remember—that Mr. Allen did not go out of business or leave Birmingham, but that he was put out of business, which during the preceding years he had built up by the purchase of the Andalusia stock by Swift & Company.

That no doubt the government specifications rejecting soft and oily hogs were written by big packers who were dealing in western hams. That in reading over some of, the specifications it seemed as though some of the big packers or packers closely connected with them drew them up so that the smaller packers would find it impossible to bid on them. That he knew when he went to Montgomery to bid on some stuff when he saw some of the specifications he got on the train and came back home.

That he does not know as a matter of fact whether E. P. Allen during the last years that he handled Andalusia product sold more than Swift & Company did during the following year, or less.

(Witnesses excused.)

Mr. Horton: That closes the respondent's case in Birmingham, Mr. Examiner.

1888 Examiner Sadler: Anything in rebuttal?

Mr. Haycraft: Yes, we want to put Mr. Allen on.

E. P. ALLEN was thereupon called as a witness for the Commission in rebuttal, and having been duly sworn,, testified as follows:

Direct Examination by Mr. Haycraft.

Q. Mr. Allen, are you the same E. P. Allen that testified for the Commission in this case last March?

A. Yes sir.

Q. You were acting as broker for the Andalusia Packing Company, were you not?

A. Yes sir.

Q. From September, 1916 to some time in September, 1917, I understand?

1889 A. Yes sir.

Q. I will ask you first, Mr. Allen, whether during the time that you had this account you made any sales to Swift & Company?

A. Yes sir.

Q. Of the products of the Andalusia plant?

A. Yes sir.

Q. Have you any way of determining the amount of those sales and the time that they were made?

A. Not the exact amount, but we can get somewhere close to it from that cash book.

Q. What is this book that you have before you now?

A. It is a memerandum cash book, where we put the names of the customers and the amount that they paid, which was then put in the bank.

Q. Does it represent collections made?

A. Yes, it represents collections made from customers.

Q. How is it designated at the top here, of the page?

A. Andalusia Packing Company, 1916.

Q. What is the date of the first entry, what does the first entry consist of?

A. September 7th; the first entry was one cash sale, amounting to $9.24.

Q. What do those cash sales represent?

A. They represent sales to customers there in the house for cash or to customers outside on C. O. D. terms.

1890 Q. Then I notice under this the names Wilson & Company, Morris & Company, and other names, what do those represent?

A. They represent sales which were made to those people who paid by checks.

Q. How were these entries made in here with regard to the date as it appears on the left hand margin?

A. How were they made, you say?

Q. Yes, with reference to the time indicated on the left hand margin?

A. The date that they represent.

Q. In other words, the entries were made the same day that the money was received?

A. The entries were made the same day that the money was received, yes sir.

Q. Does this book contain any other data besides the character of date you just indicated, representing sales and transactions of the Andalusia Packing Company?

A. Yes, the latter part of the book is in reference to another account that we represented, J. E. Decker & Company, which started in February, does not show the year on that.

Q. What year was it, do you remember?

A. It was '18, February 21st, 1918.

Q. Well. pages one to ninety of this cash book represent what, Mr. Allen?

A. Represent collections we made for the Andalusia
1891 Packing Company products for the time that we represented them.

Q. And contains the date collections were made, the name of the customer paying the account, and the amount of the money collected, is that correct?

A. Yes sir. Now, that does not cover all of the collections that were made during the first five months that we represented them. A good many collections were sent direct —rather, a good many remittances were sent direct to the Andalusia Packing Company.

Q. And were not entered in this book?

A. And were not entered in this book.

Q. So for that reason this is not a complete record?

A. Yes sir.

Q. Of the entire transactions?

A. No sir.

Q. Well, referring to this record, will you state the collections made from sales made to Swift & Company during the period of time—and by Swift & Company I mean Swift & Company's branch here, the branch here of Swift & Company, the respondent in this case.

A. On December 28th we collected from Swift & Company $729.17. That represented sales that we made to them for that amount.

Q. What years was that, Mr. Allen?

A. 1916. On page 11, December 7th, we collected $274.59; December 7th, 1916, we collected $274.59 covering sales made to Swift & Company.

1892 Q. Is there any way you can tell at this time what these sales consisted of, what commodities?

A. No, only from memory.

Q. Can you remember each identical sale, or can you just remember in a general way when you sold?

A. Just in a general way what we sold.

Q. Have you any other sales?

A. Yes, there was a number of different sales in here, but they are scattered around. Page 25, February 1st, 1917, we collected from Swift & Company $211.66, covering sales made to them.

Q. Any other entries?

A. Yes. Page 29; January 16th—February 16th, that is, we collected from Swift & Company $155.30 covering sales made to them, again.

Q. Any other items?

A. Page 32, February 26th, we collected from Swift & Company $111.37, covering sales made to them.

Q. Any others?

A. Page 34 we collected from Swift & Company $261.14, on March 1st, 1917.

Q. And others?

A. Page 43 on March 30th we collected from Swift & Company $97.24 covering goods sold to them.

Q. Does the book show any other collections made from Swift & Company?

1893 A. I have not located any others in there; I think that is about all my book shows.

Q. Now, will you state to the best of your recollection the occasion for these sales, what the commodities were?

A. I dont know the occasion.

Q. The circumstances under which they were sold from their beginning up to the last sale that you remember you made?

A. I dont know just the circumstances or occasion for the sale except that Swift probably needed the product and went out to buy it and bought it from us.

Q. What products do you recall that you sold?

A. The product was principally fresh meats, hams, shoulders and loins.

Q. Were they Andalusia products?

A. They were Andalusia products, yes sir.

Q. Do you recall having any conversation with the manager or any other employee of Swift & Company at the time these purchases were made?

A. Not at the time the purchases were made, no.

Q. When the collections were made or at any time, in regard to the products that you were selling?

A. Well, I know they usually laughed at us and wondered how we were able to get the prices we were able to get; the amusing part of it to us was that they would buy the stuff and compete with us on it. We made them a little 1894 lower price than we did the trade on it.

Q. You made them a lower price on account of the quantity?

A. Yes, on account of the quantity they bought. We had a constant fight with the salesmen representing the different packers knocking the Andalusia products; it was a continuous fight, not only with Swift but with all the other packers.

Q. In selling the Andalusia product during the time that you had that account did you restrict your salesmen as to any particular territory where they were to solicit trade?

A. Yes, we did not have—at that time my best recollection is that we had four salesmen working, there were three constantly on the trade, and the other one was in the house part of the time. We had to limit ourselves to the trade that we worked, we also limited ourselves to the class of trade that we worked; when I say the trade we worked I mean the territory we covered, also to the class of the trade that we worked, we also limited ourselves to the class of trade that we worked; when I say the trade we worked I mean the territory we covered, also to the class of the trade that we worked; there was a great many smaller merchants that we would not sell on open terms at all.

Q. Just what territory did you cover and work in the solicitation of business for the Andalusia products?

A. We catered largely to the coal mining business in the Birmingham district, who were the largest buyers. Next we catered to the upper second Avenue trade, and the large markets down town, and then we picked out on the outskirts of

the town the customers that were well rated, and had
1895 the reputation of being prompt pay and worked them.

Q. Mr. Allen, did you hear from Hackley testify yesterday afternoon?

A. Yes sir.

Q. Do you recall him stating that he bought Andalusia products from four to six cents under the western pork products?

A. Yes sir.

Q. I will ask you wheher or not you recall selling any pork products to Mr. Hackley four to six cents under the price of western pork?

A. No sir, we did not.

Q. Do you recall selling any products to anybody at four to six cents under the western price?

A. We did not.

Q. What was the usual differential, if any, that was as observed by you in the sale of the Andalusia products while you were handling their account?

A. The small trade we got practically the same price as the big packers did all over the district; with the larger customers we would make some concessions on account of quantities, and the big packers would always make about the same concessions on their products. In other words, we held it practically at the same price as the western products were being sold at, and we knew that we were doing that, because we represented a western house at the same time and compared the prices from day to day.

1896 Q. What selling argument did you use in making your sales to the trade?

A. That it was an Alabama product and that they were helping Alabama industries in being goods from them; that was the main selling point we had.

Q. How about whether or not it was frozen or fresh pork?

A. There was very little question at that time brought up about it, in fact, up until the time, about the time that we discontinued handling it there had been comparatively little frozen pork brought in here except in the extremely hot weather in the summer time; packers are as a rule were bringing in fresh stuff in here.

Mr. Horton: What was that answer?

(Answer read)

Q. There has been some testimony here by witnesses yesterday and today in regard to the service rendered by Swift

& Company after that concern purchased the Andalusia Packing Company. I will ask you to state for the record the kind of service you rendered at the time you were handling the Andalusia account, going from the time you ordered the goods and it was shipped to the time you delivered it to your customers?

A. At the time that we were taking orders for the Andalusia Packing Company, at the time we began, I should say, we would take the orders and send them in to them to fill them; they would fill and ship them; the car would
1897 arrive here; it would be unloaded immediately upon arrival.

Q. What facilities did you have at that time for making deliveries?

A. I did not have cold storage, but I kept the goods in the refrigerator car until it was checked out; we had our own drays, and where we did not have enough, some of these cars would come in that way, we would always hire extra drays.

Q How long after the goods arrived would you get them to the customer?

A. Usually within three to four hours; as soon as it could be unloaded.

Q. Now, after—at that time how long would it take a car to get from Andalusia to Birmingham?

A. The cars would leave Andalusia at 2:45 and arrive in Birmingham around 7:30 to 8:00 the next morning, they were at our back door between 8:30 and 9:00 o'clock every day, except occasionally a delay, which did not happen but very seldom.

Q. 2:45 in the afternoon or morning?

A. 2:45 in the afternoon, and they were at our back door at 9:00 A. M. the next morning.

Q. Now, you say at first your orders were sent in direct to the plant, and you made deliveries as the cars came in; was there any change in that situation then?

A. Yes, along about January 1st, we just ordered out the product that we thought we could sell; they would
1898 consign it to us, and we would deliver it out of the car; we would keep those cars there then sometimes about a couple of days, and keep them well iced; we were in position to give just about as good refrigeration, except in July and August, as we would have been if we had had a cooler, because we was not crowded for space; we would deliver

part of it out of the car and it would leave plenty of room in there to handle the remaining part.

Q. Did you ever find it necessary to put some of the products in cold storage?

A. Yes sir.

Q. Will you state whether or not you lost any of the product due to the lack of proper refrigeration?

A. No sir.

Q. Did you hear Mr. Blumely testify this morning?

A. Yes sir.

Q. In regard to the trade served by Swift & Company during 1916 and '17, up to date?

A. Yes sir.

Q. I am going to read to you the names of the concerns which he gave as his customers, and ask you whether or not you sold them Andalusia products, and also to state the character of the concern, whether it was small or large concern, and whether it handled fresh meats or not.

A. All right.

Q. T. M. Wood, F, about 21st?

1899 A. Yes, we sold him; he was a small concern, carried fresh meats, though.

Q. Pete Madona, 23rd street near Avenue H?

A. We sold him; he was small, sir; sold him C.O.D.

Q. Palace Market, Five Points and 21st street?

A. Yes, we sold them

By Mr Horton: Q Now, when you say you sold them, Mr Allen, you mean that you sold them Andalusia products?

A Yes, either Andalusia fresh meat or hams or lard or whatever it was that we were selling him.

Q. You sold him some kind of Andalusia products?

A Yes sir.

By Mr. Haycraft: Q. D. Costiglia, 25th and Avenue F?

A. I cannot recall where I sold him.

By Mr. Horton: Q. Where or when or if ever?

A. If ever.

By Mr. Haycraft: Q. N. George, Avenue F and 27th street?

A. Sold him C.O.D. All along.

Q. H. J. Clark, Avenue E and 27th street?

A. I sold him.

Q. Smith Taylor, 28th and Avenue F?

1900 A. Did not sell him.

Q. What kind of a market was it?

A. Small man.
Q. How about H. J. Clark?
A. He is a very small man, too.
Q. How about D. Costiglia?
A. Small man.
Q. J. E. Davis, 29th and Avenue E?
A. Sold him regularly, a great deal of stuff.
Q. F. E. Meyer?
A. I sold him regular.
Q. Corey & Falkner?
A. Sold them regular; good merchants, all three of those you have just named.
Q. J. G. Dickerson?
A. I sold him regular.
Q. Was he a large or a small merchant?
A. Good sized merchant.
Q. W. J. Bond?
A. I did not sell him.
Q. Avendale Grocery?
A. I sold him regularly, good deal of stuff.
Q. Large or small market?
A. Well, it is a large outside market.
Q. Avondale Cafe?
1901 A. Dont know them.
Q. Pharo Grocery?
A. Sold him regular.
Q. Ezell Brothers?
A. Dont know them.
Q. Watson Grocery Company?
A. Dont know them.
Q. H. Swope?
A. I think that should be Savoya; I have done business with them but I cannot say whether I have sold them Andalusia stuff or not, right now.
Q. These last five I have named that you say you did not sell, are they large or small concerns?
A. They are small.
Q. Charles Megro?
A. Very small merchant, I have not sold him anything.
Q. J. C. Steinbauer?
A. Dont know him.
Q. William Wood, on Georgia Road?
A. I sold a Mrs. Wood, out in Woodlawn, out in that

neighborhood, but I dont know that I sold her any Andalusia products.

Q. Shelby & Company?

A. I sold them regular.

Q. J. W. McGuirk?

A. I did not sell him; small merchant.

1902 Q. J. H. Shotling?

A. I did not sell him; small merchant.

Q. D. S. Boone?

A. I used to sell him, but I dont think I sold him any Andalusia stuff; very small merchant.

Q. A. T. Lawler?

A. A. T. Lawler?

Q. J. L. Lawler?

A. I dont recall if I sold him.

Q. William Working, 15th Street near 12th Avenue?

A. I sold him.

Q. W. S. Mallory?

A. I sold him.

Q. J. L. Thornton?

A. I sold him.

Q. D. C. Rice?

A. I sold him.

Q. Brown Grocery Company?

A. I sold them.

Q. J. M. Parton, near Woodlawn bank?

A. I dont recall selling him Andalusia stuff; I know we have sold him something.

Q. Is he a large or small merchant?

A. Small merchant.

Q. Burris & Son?

1903 A. Burris Grocery Company, that should be.

Q. Burris?

A. We sold him a great deal of Andalusia stuff; he is a big merchant.

Q. Woodlawn Mercantile Company?

A. Sold them as long as they were in business.

Q. Mrs. J. M. Ashley?

A. Dont know her.

Q. Tony Multobino?

A. Dont know him.

Q. John Vance?

A. Dont know either of those.

Q. Robert C. Lewis, Tidewater carline?

A. No, did not sell him, dont know him.
Q. Tony Tombrillo?
A. Dont know him either; we had a Trombillo; this is Tombrillo, but we had a Trombrillo.
Q. Where was he located?
A. He was out in the East somewhere, just where I dont know off hand.
Q. But you would not say it was Tony, you would not be sure of that?
A. No; he paid cash for his goods.
Q. George Hyde, Wauhoma Station?
A. I did not sell him Andalusia goods.
1904 Q. W. H. Mitchell?
A. Did not sell W. H. Mitchell.
Q. H. A. Bartman?
A. Did not sell him.
Q. Now out of business. These last five that you have named that you have not sold, are they large or small merchants?
A. All small merchants; there is only two or three good merchants in that east end of town.
Q. E. Canterbury?
A. Did not sell him at all.
Q. Mrs. J. M. Atkins?
A. Did not sell her.
Q. Sadler Brothers?
A. Did not sell them; I thought this morning when I marked that, that I did, but it was before that; Sadler Brothers was out of business in 1916 and '17 anyhow, I am positively sure of that.
Q. Howard College?
A. Never did sell them.
Q. Orphans' Home?
A. Never did sell them.
Q. L. A. Ranson?
A. Did not sell him.
Q. C. J. Henry?
A. No.
Q. J. A. Steger, and Godwin was the predecessor of Steger?
1905 A. I dont know him.
Q. A. Montano?
A. We sold him, but I cannot say that we sold him Andalusia stuff; since I have marked that I have gone through the

cash book, and I did not find his name in the cash book at all.

Q. J. I. Suratt?

A. Have not sold him.

Q. I will ask you, Mr. Allen, if the book—if you do not find his name in the cash book, if that is proof you did not sell him Andalusia products?

A. No, we might have sold him as a C. O. D. customer, and his name would not be in the book at all; that is the way we did with a good many of these.

Q. So that in your opinion would there possibly be some of these names that you sold on a C. O. D. basis?

A. It is not only possible, but it is an actual fact; there is a good many of them that we sold that way, that we sold on a C. O. D. basis, and their names would not be on the cash book at all.

Q. That there is no entry there does not prove that you did not sell them?

A. No sir.

Q. Baggert & Johnson?

A. No sir.

Q. Higgins & Turner?

1906 A. No sir.

Q. J. D. Sutton?

A. No sir.

Q. Griffin Brothers?

A. No sir.

Q. W. T. Dixon?

A. Yes, we did sell Griffin Brothers, too.

Q. W. T. Dixon?

A. I dont think we sold him on the Andalusia account.

Q. E. Jenkins, Gate City?

A. There was a Jenkins out there, but that dont seem to me to be his initials, at that time.

Q. How about selling him?

A. I would not say that I did.

Q. T. C. Burgess?

A. We sold him.

Q. J. T. Ramsey, Irondale?

A. I dont think we sold him; I wont say positive about Ramsey.

Q. Bennett & Duke, successors to W. L. Georgie & Company?

A. Bennett & Duke were not in business in 1917; in fact they went into business about the latter part of 1919; we have sold them since then, but I did not sell them Andalusia stuff.

Q. Did you sell W. L. George?
A. No, did not.
Q. J. W. Holbrook, successor to W. T. Mackin?
1907 A. No.
Q. Montgomery?
A. I did not sell him.
Q. George Elkins?
A. No sir.
Q. Mrs. J. M. Addison?
A. No.
Q. E. L. Williams—no, first L. A. Tynes?
A. No.
Q. E. L. Williams?
A. Did not sell him.
Q. J. W. King?
A. Sold him a lot of Andalusia stuff, all on a cash basis; he was a fellow that buys only for cash, buys only for cash.
Q. W. L. Walker?
A. Did not sell him.
Q. L. E. Kirby?
A. Sold him regular.
Q. A. Yarborough?
A. I sold him.
Q. Mrs. J. W. Parker?
A. I did not sell her.
Q. J. Arnst?
A. Did not sell him.
Q. East Birmingham market?
1908 A. Did not sell him.
Q. F. W. Smith?
A. Did not sell him.
Q. L. E. Lefler?
A. We sold Lefler but it was for cash; he owes me a bill now that he should have paid to Andalusia; I had to pay it myself.
Q. A. M. Woford?
A. I do not recall selling him; I could not locate that in the cash book.
Q. Now, a number of these last half dozen or so names that you say you did not sell, are they large or small markets?
A. They are small markets, grocery stores, mostly.
Q. And the same statement in regard to them would hold true that you stated in regard to the former small markets?

A. Yes sir.
Q. Now, Lee Wright, 44th and Tenth Avenue?
A. Did not sell him.
Q. Joe Schilici?
A. Did not sell him.
Q. Frank Salina?
A. Did not sell him.
Q. Alexander Brothers, 39th and Tenth Avenue?
A. Did not sell Alexander Brothers until I got the Bullock Packing Company account; used to sell him soft meats, but not until I got the Bullock Packing Company.
1909 Q. Paul Alexander, 39th and Tenth Avenue?
A. That same applies to him; I did not sell him.
Q. Joe Graffio?
A. Same applies to him.
Q. W. E. Vernon?
A. Did not sell them.
Q. L. H. Smith
A. Did not sell him.
Q. Paul Bertolina?
A. Did not sell him.
Q. Stevens Grocery Company?
A. Did not sell him.
Q. Are these that you did not sell all small merchants or large merchants?
A. They are very small merchants.
Q. J. C. McElveen, formerly Joe Schilici?
A. I wont say positive about that, because I could not find his name in the cash book at all.
Q. Philip Lombardi?
A. I wont say about him positive.
Q. Frank Trongolli?
A. Sold him for cash.
Q. A. Villa?
A. Sold him for cash regular.
Q. E. F. Romeo?
1910 A. Sold him regular.
Q. H. J. Romeo?
A. Sold him regular.
Q. Ralph Agrimi, Avenue C and 23rd?
A. Sold him for cash.
Q. J. Filler?
A. Dont know him.
Q. Is he large or small?

A. Very small.
Q. Philip Lazusa?
A. Sold him for cash.
Q. George Labue?
A. Sold him for cash.
Q. Avenue B Cafe?
A. Dont know them.
Q. By dont know them you mean you did not deal with them?
A. I say, I did not deal with them. This cafe and this Labue here are one and the same thing is my understanding of it; they are both there in the same place.
Q. The Little Cafe, Charlie's place?
A. No, I don't know them.
Q. A. M. Romeo?
A. I sold him regular.
Q. Joe Borhofous?
A. Sold him for cash.
1911 Q. John Malik?
A. Sold him for cash.
Q. Joe Wheeler Cafe?
A. That is up town; I did not sell him at all.
Q. J. V. Buchanan?
A. Sold him a great deal of stuff; sold him for cash.
Q. Mrs. Kate Grady, little store on 24th between Fourth and Fifth Avenue?
A. I sold that party, but I would not say I sold any Andalusia stuff; when this gentleman was testifying this morning, I knew the man he had reference to, but I wont say just what I sold, because I dont remember.
Q. J. T. Thornton?
A. Sold him regular.
Q. Gromis Brothers?
A. Sold him regular.
Q. Ridgeley Grocery, near the Ridgley apartment?
A. I did not find them in the cash book; I dont think I sold them, on that account.
Q. Greenwood Grocery, Earl Benton?
A. We sold him for cash.
Q. Alabama Cafe?
A. No.
Q. Reliance Hotel, across from the Terminal station?
A. Sold him for cash.
1912 Q. Joe Buzzanca?

A. Dont know him.
Q. A. Labue?
A. Dont know him.
Q. Paul Mainilla?
A. Dont know him.
Q. By dont know him, you dont know the place or you have never dealt with him?
A. Never deal with him, so far as I know; there is a good many of those boys that come into our place and buy, but they pay cash and we dont know their names.
Q. Norwood Grocery?
A. I sold him.
Q. Lane Grocery Company?
A. I did not sell Lane, sold his brother-in-law.
Q. J. D. Benton?
A. That should be J. C. Benton in there, but he gave it J. D. this morning.
Q. You sold to J. C. Benton?
A. Yes, I sold to J. C. Benton.
Q. Charles Baldona?
A. I sold him.
Q. Charles Morrison?
A. I dont know him.
Q. No. 2 Russo?
1913 A. I know him, but he trades with us occasionally, I wont say positive that I sold him.
Q. L. A. Morton?
A. I did not sell him, I dont know his name.
Q. W. O. Emond?
A. Is that W. B. Emond?
Q. Yes?
A. I sold him regular; he was a very good customer on Andalusia products.
Q. St. Vincent's Hospital?
A. Did not sell them.
Q. Mike Friolla?
A. I sold him for cash.
Q. J. Friolla?
A. Sold him for cash.
Q. John Degesus?
A. I dont know him.
Q. Sam Branda?
A. I dont know him.
Q. Pete Mola?

A. Sold him for cash.
Q. John Shields, a baker?
A. Dont know him.
Q. Gold Market?
A. That should be A. Goldberg, proprietor of the
1914 Gold market at that time; I sold him a great deal of Andalusia products.
By Mr. Horton: Q. How do you know it should be A. Goldberg?
A. I have been selling him ever since he first opened up under the name of—the firm name of the Gold market; up to the time he sold out a few months ago.
Q. That is between 24th and 25th on Second Avenue?
A. Yes sir, he is now on Morris Avenue, somebody else is running his place up there.
By Mr. Haycraft: Q. Five Points Drug Company?
A. Dont know them.
Q. Parisian Baker?
A. I sold them lard, but I dont think I sold them Andalusia.
Q. J. C. Robinette, Third Avenue?
A. No, I didnt sell him.
Q. Mrs. Barrett?
A. I did not sell her.
Q. Chandler & Company?
A. I sold him regular.
Q. Both of his stores?
A. Both of his stores, yes sir, sold him lard.
Q. John Portero?
A. Sold him for cash.
Q. Craig Grocery Company?
1915 A. Sold them regularly.
Q. C. Smith?
A. Don't know them.
Q. Green Grocery Company?
A. There is a R. A. Green out there that we sold, but he was not in business then, was not any Green Grocery Company out there in 1917; there was a Bennett, that is the one he was talking about this morning, Bentley, it was, there was a Bentley, succeeded by somebody else.
Q. Did you sell him there?
A. Yes sir, I sold him there regularly; I dont recall the customer's name though; he was not in business then, was not any Green, though.

Q. T. W. McCoy?
A. Dont know him.
Q. W. M. Wade?
A. Dont know him.
Q. Dolcito Quarry Company?
A. I sold them, but I didnt sell them Andalusia.
Q. Tennessee Coal & Iron Company?
A. Sold them a great deal of Andalusia products.
Q. George Marcus, Eastlake?
A. Did not sell him.
Q. Sloan Brothers, Spring street and Avenue B?
A. We did not sell them Andalusia products.

1916 Q. Now, Mr. Allen, I will ask you if there were any customers in that same territory that you did sell that were not named by Mr. Blumely this morning?
A. Yes, there was quite a few.
Q. Can you name some of them?
A. I have got a list of them here.
Q. Read them into the record?
A. T. L. Clay at Boyles.
By Mr. Horton: Q. What is his address?
A. Boyles, Alabama. That is No. 1 store; he has got another store at Vanderbilt, which is this side of Boyles, half way into Birmingham. I sold Yielding Brothers; W. S. Brown Mercantile Company; Lee Brothers, Perry & Company; A. F. Wyatt, Blackwood & Bentley, J. T. Hall and Brother; A. B. Henderson.
Q. Are these all out in the territory where Mr. Blumely was covering?
A. Yes sir. I dont think he worked these people. I have seen him up there occasionally but I dont think he works them; he has mentioned people all around them, however.
Q. All right.
A. A. B. Henderson; V. W. Wood & Company; A. D. Vandergriff & Son.
Q. Vanderbilt?
A. Vandergriff; J. I. Boggan.

1917 Q. Boggan?
A. Boggan. Bogles Mercantile Company.
Q. What was that?
A. Boyles Mercantile Company. G. M. Meyers.
Q. Meyers?
A. G. M. Meyers; W. G. Tyler Mercantile Company.
Q. What?

A. W. G. Tyler Mercantile Company. C. L. O'Neil; Murray Brothers; Hill Grocery Company. That is all that I can recall off hand; there was quite a number of others that are out of business now and gone. Those are all big merchants.

By Mr. Haycraft:

Q. Those are all good merchants?

A. Yes sir.

Mr. Haycraft: Mr. Examiner, I wish to offer this book in evidence which I have just had described as the cash book, pages one to ninety inclusive, of this record. The balance of the book is not offered in evidence for the simple reason that it does not pertain at all to the business of the Andalusia Packing Company and is not relevant at all. It is not a loose bound book, however, and cannot very well be separated from the volume.

Examiner Sadler: Any objection?

Mr. Horton: Well, I would like to know exactly what this covers please. May I ask a question or two?

Mr. Haycraft: Go ahead.

1918 By Mr. Horton:

Q. Mr. Allen, you testified before that you would make out duplicate invoices and send them to Andalusia?

A. Yes sir.

Q. They would keep a ledger down there?

A. Yes sir.

Q. That would show—that would be a duplicate of your ledger up here?

A. Yes sir.

Q. That would show all the accounts you had?

A. Yes sir.

Q. Each and every one of them?

A. They would not show those cash sales accounts except as cash sales accounts.

Q. They would not show the cash sales accounts except as sales accounts?

A. Yes sir.

Q. Now, will this cash book show all the cash sales accounts?

A. All the cash sales that were made, yes sir.

Q. Yes, that, is, you can take the ledger together with this cash book, and if you cannot find the customer's name in there you did not make a sale?

A. Yes.

Q. Either one or the other?

A. Except in cash sales, there would not be any cus-
1919 tomer's name shown there, of course.

Q. Well, how did you get credit back to the Andalusia Packing Company for the sales made for cash, then, wouldnt that go through this cash book?

A. We would put them down as a cash sale instead of John Smith's name we will just say cash sales in there, make them all as one, you see.

Q. And the Andalusia Packing Company had no way of knowing what customers you sold to?

A. No sir.

Q. Who was getting the product or anything about it?

A. No.

Q. How much of you business would that cover?

A. Oh, not a very large percentage, I suppose we would report—it would range in money value from thirty-five to one hundred and fifty dollars a day, covering the cash sales, sometimes larger.

Q. All right, now, you might for instance sell—take Mr. Hackney, he was one of your good customers, wasnt he?

A. Yes sir.

Q. You might make a cash sale to him?

A. No.

Q. Would not make a cash sale to him?

A. No.

Q. Well, then, the cash sales that you made were not to good customers?

Q. It was C. O. D. customers?

1920 A. No, it was C. D. O. customers.

A. Or house customers that came in and paid cash for it.

Q. Wouldnt one of your good customers come in and pay cash for things?

A. Well, they might once in a while, but very seldom.

Q. Well, I see here J. M. Stewart, a bill here for him in your cash book, does that mean you did not have an account with J. M. Stewart?

A. No, no, that means we collected from him, probably for a week's supplies, on one day there.

Q. This cash book is the cash that you collected for ledger accounts and everything else?

A. Oh, yes, everything we collected.

Q. Everything you collected for the Andalusia Packing Company, you collected and put in this book?

A. Yes.

Q. Well, now where do the cash sales appear on this book?

A. Appear in each day's work; they are, as a rule, usually, the first item or the last item.

Q. $56.12?

A. Yes sir.

Q. On October 4th?

A. Yes sir.

Q. That would be the cash sales for that day?

1921 A. Yes sir.

Q. And going down that page, on October 9th there were no cash sales?

A. Well, I dont know whether there was on October 9th, or not; it might have been made after banking hours and put in the bank the next day.

Q. None appears here?

A. No, but if none appears there we could not say that none were made under the circumstances I just described.

Q. None appears on the 10th?

A. Probably wasnt any made during those two days.

Q. Then on October 11th you have got $19.80 cash sales?

A. Yes.

Q. Then on the 13th you have no cash sales; none appear here?

A. No.

Q. If any were made they would appear here?

A. Yes.

Q. On the 14th of October 1916 there was no cash sales?

A. No.

Q. On the 16th of October there was no cash sales?

A. No.

Q. On the 17th the cash sales amounted to $22.80?

A. Yes.

Q. On the 18th there are none?

A. No.

1922 Q. On the 20th there are none?

A. No.

Q. On the 21st there are none?

A. $23.15 on that day.

Q. That is the 23rd I am talking about; the 21st now?

A. Oh, yes, that is the 23rd; no, none on the 21st.

Q. On the 23rd there was $23.15?
A. Yes.
Q. On the 24th ere was none?
A. Yes.
Q. Oh, yes?
A. $3.35.
Q. $3.35M.
A. Yes sir.
Q. On the 25th there was none?
A. No.
Q. On the 26th it amounts to $40.30?
A. $40.30?
Q. $40.30?
A. Yes sir.
Q. On October 28th it is none?
A. No.
Q. Well, now, going back, the book will speak for itself; if there was no cash sales shown here, none was made?
A. No.
1923 Q. All right, now, all of your good customers were carried in the ledger accounts, were they not?
A. Practically all of them, yes sir.
Mr. Horton: No objection to the book.
Examiner Sadler: The book will be received and marked Commission's Exhibit No. 200.
(Thereupon the book was received in evidence and marked "Commission's Exhibit No. 200.")
By Mr. Haycraft: Q. As I understand your testimony, Mr. Allen, this book does not reflect all the money received by the Andalusia Packing Company for products sold in the Birmingham market during that period of time?
A. No sir.
Q. But simply reflects the amount received by you for the Andalusia Packing Company for products sold in Birmingham during that period of time?
A. Yes sir.
Q. As I understand your testimony, in the beginning, until the 1st of January, 1917, part of the customers remitted direct to the Andalusia Packing Company?
A. Yes.
Q. Is that correct.
A. Yes, and some after that.
Q. And some after that?
1924 A. Where they had opened the account as the And-

alusia Packing Company, Andalusia, Alabama, the remittance would go direct to them even then.

Q. So that in order to know the exact amount of goods sold by the Andalusia Packing Company at Birmingham, it would be necessary to consult the ledgers in Andalusia?

A. Yes sir.

By Mr. Horton: Q. Well, all sales made by you would be in what is known as the Birmingham ledger in Andalusia?

A. If the records are properly kept they would be, yes sir.

Q. Yes sir, that is the record that you indentified when you testified here last March?

A. Yes sir.

Q. You spoke about going over different accounts with Mr. Davis and making certain pencil notations on them?

A. Yes sir.

Mr. Haycraft: I will say that in offering this piece of evidence now, that I do not offer it for the purpose of showing the exact amount of business done by the Andalusia Packing Company in this market, but merely to indicate some of the larger customers of the Andalusia Packing Company and the weekly sales to those customers.

Examiner Sadler: Are you through with your direct examinations?

1925 Mr. Haycraft: Over the period of time covered by the exhibit.

Mr. Horton: You are through, are you, Mr. Haycraft?

Mr. Haycraft: Yes, I am through.

Cross-Examination By Mr. Horton.

Q. Now, Mr. Allen, you said you had four salesmen, did I understand you correctly?

A. Yes, I had a man by the name of Bauer, a man by the name of Baugh, and I had a fellow by the name of Chapin, and a man by the name of Mikwee, a Syrian salesman.

Q. Did you have four all at the same time?

A. No, not all at the same time.

Q. What is the most you ever had at any one time?

A. Four is the most I ever have had—that I ever had then at any one time; along in 1916 and '17 is what I had reference to.

Q. I am talking about the time you represented the And-

alusia Packing Company; you had four salesmen at one time?

A. Yes sir.

Q. For how long a period of time did you have four salesmen?

A. I dont recall just how long it was.

Q. What would you say?

A. Well, probably it was along in January, February and March, we put the extra one on, probably six months.

Q. Probably six months you had four salesmen?

A. Yes.

1926 Q. Now, when you testified before you were asked by Mr. Taylor on direct examination—

Mr. Haycraft: What page is that?

Mr. Horton: Page 783.

Q. The Question: "Did you employ salesmen at the time you had the brokerage account of the Andalusia Packing Company?

"Answer: Yes.

"Question: What period did that cover." No, that is, wrong—the question should read: "What territory did that cover?"

"Answer: Birmingham and surrounding territory.

"Question: Can you state who these gentlemen were?

"Answer: Yes, Mr. George D. Bauer, B-a-u-e-r; and A. T. Baugh, B-a-u-g-h."

"Question: And did you retain them after the Andalusia Packing Company ceased shipping goods to you?

Mr. Haycraft: You skipped something in there.

Q. Pardon me, I am going too fast. After you said you had Mr. Bauer and Mr. Baugh, you said, "Question by Mr. Taylor: What was the name of that last one?" You said, "A. T. Baugh, B-a-u-g-h. That is all I had at that time."

A. Well, that was probably with reference to the time that we first began in there.

Q. Now he is talking about the time you represented the Andalusia Packing Company. Which do you want this record to show, that you told the truth then, or that you are telling it now?

1927 A. Why, I intended to tell the truth all the time, sir.

Q. Well, your statements were contradictory. When Mr. Taylor was examining you, you were very friendly to his side, werent you?

A. I dont suppose I am any more so than I am to yours.

Q. Do you mean to say that you are not more freindly to the Commission in this case than you are to the respondent? Havent you been sitting across the table through all of this hearing, with counsel for the Commission, helping them conduct their case? Havent you neglected your business to come up here and sit with counsel for the Commission for the past two days?

A. I came up here on subpoena.

Q. Havent you neglected your business to come up here and sit with counsel for the Commission for the past two days?

A. Why, I suppose I have let some of the business go by; I have gone back and worked later on.

Q. Havent you sat across the table here and listened to some of your old customers testify?

A. Yes.

Q. They havent testified very favorably to you, either, have they?

A. To me?

Q. Yes?

A. I dont care how they testify, as far as I am concerned, sir.

Q. You have done everything possible to assist counsel for the commission in this case, havent you?

1928 A. No sir, I dont think so.

Q. You have given them the names of the witnesses to call, havent you?

A. I have given them the information they asked of me.

Q. You have told them who would be the best witnesses to call, you have told them who not to call, you have helped them get up these witnesses?

A. No sir.

Q. Didnt you tell them to go and see Mr. Hackney when we were here before?

A. I might have, they asked me who I had sold to.

Q. Didnt you tell them to go and see Mr. C. B. McIntyre?

A. I told them who I had sold to, I dont think I told them to go and see him; but they asked me who we had sold to, and I told them.

Q. Didnt you tell them those would be good witnesses for them to use?

A. I dont think I did, at all.

Q. Now, all the customers that are on this list here that

Swift & Company sold that you did not sell are all small customers?

A. Yes, practically every one of them.

Q. And all that you sold are large customers?

A. No sir, not by any means.

Q. Now, let's take this list here, you repeatedly replied to Mr. Haycraft's questions—he would go down here and
1929 name four or five customers that you did not sell, and then you would say they were all small customers?

A. Yes.

Q. You didnt like it when Swift & Company bought the Andalusia plant, did you?

A. No, indeed, I did not.

Q. You thought they didnt treat you fair?

A. They did not.

Q. They gave you a dirty deal?

A. Yes sir.

Q. And of course that makes you feel very kindly toward them?

A. Oh, as far as Swift & Company at Chicago is concerned, I never held it against them; I held it against Swift & Company in Andalusia, the manager in charge there.

Q. Who did you hold it against, Swift & Company in Birmingham?

A. No, not al all; we have done business with them since then, and are doing it now, nearly every day, business with them.

Q. Have you got a cooler over to your house now?

A. Yes sir.

Q. What temperature do you carry that cooler at?

A. Carry the beef box at 34, carry the pork box at 28; carry the dry salt meat possibly about 40.

Q. Have you got double doors there?

A. No.

Q. Single doors?

1930 A. Single doors.

Q. Do you think that you can carry fresh meat in the refrigerator cars in the summer time as well as in a cooler?

A. No sir.

Q. Cannot?

A. Yes sir.

Q. Spoils quicker?

A. Yes sir.

By Mr. Haycraft: Q. I believe you so testified, did you not, Mr. Allen?

A. Yes, I testified that, in the summer time.

By Mr. Horton: Q. Now, these four salesmen that you had, did they cover all of the Birmingham territory?

A. You mean outside territory as well as inside?

Q. All of what is known as the Birmingham territory?

A. No, did not.

Q. Did you sell goods in outside cities, outside of Birmingham?

A. Yes sir.

Q. What cities did you sell them in?

A. I sell them in Bessmer, Blocton.

Q. Blocton?

A. Yes sir, Tuscaloosa, Holt, Kellerman.

Q. Kellerman?

A. Yes sir.

1931 Q. Go on.

A. Jasper, Empire, Corona, Paris, Pell City.

Q. Pell City?

A. Yes sir, Ragland, Lincoln, Talladega.

Q. Talladega?

A. Yes sir, Anniston, Gadsden, Sylacauga, Goodwater.

Q. Goodwater?

A. Yes sir, Dadeville, Alexander City, Helena.

Q. Is that all?

A. No sir. Siluria, Longview, Carlera, Clanton.

Q. Clanton?

A. Yes sir, Jemison, Verbena, Coopers, Mountain Rock, Columbiana.

Q. Columbiana?

A. Yes sir. Shelby, Vincent, Childersburg, Montevallo.

Q. Any others?

A. Yes sir, Adamsville, Blossburg, Johns, Adger.

Q. What was that?

A. Adger, Sumpter, Acton, Margaret, Leeds.

Q. And is that all?

A. And about fifteen or twenty smaller places; I cannot recall them without a map.

Q. What salesmen work this trade?

A. Mr. Baugh?

Q. Mr. Baugh?

A. Yes sir.

1932 Q. How long would it take him to make the trip?

A. He would cover it about every two weeks.

Q. About every two weeks?

A. Yes, sir, except the coal mining trade, some of the towns I mentioned, that he saw the purchasing agents.

Q. Mr. Baugh made this whole circle there, every two weeks, all these towns you mentioned?

A. Yes sir. I don't say every two weeks; there was a few of those towns that we had a broker in that worked them.

Q. You testified—if you testified before that it took Mr. Baugh three weeks to cover his territory, then what would you say?

A. I did not testify that before.

Q. What territory did Mr. Bauer work?

A. Mr. Bauer worked the downtown trade, what we term the downtown butcher trade; he went out to Avondale, Woodlawn and Pratt City.

Q. How often would be came on the trade in Avondale, Woodlawn and Pratt City, the same territory that Mr. Blumely made?

A. Once or twice a week; he was in touch with them over the phone every day.

Q. What territory did Mr. Chapin work?

A. Most of the Eastlake territory, Boyles and North Birmingham.

Q. What did Mr. Mikwee work?

A. Mr. Mikwee worked the Syrians and Dagoes downtown; most of his customers were C. O. D. customers, a large percentage of them. I was constantly on the trade myself; 1933 I only spent about an hour in the office; I was out on the trade somewhere all the time, either in the city or out of town.

Q. What trade did you work?

A. I was either in the city or out of town, no regular place at all.

Q. Now, I notice an entry of H. J. Romeo here, he was one of your good customers?

A. He was a smaller customer, yes.

Q. How often would Mr. Bauer call on him?

A. Mr. Bauer probably did not call on him but once a month.

Q. Who did call on him?

A. Mr. Chapin was working him, is my recollection now, I cannot say just exactly.

Q. Mr. Chapin was working him?

A. Yes sir, Mr. Romeo bought ninety per cent of his stuff in the house, though; he came in and bought it.

Q. How often would you sell him?

A. Sometimes every day; sometimes once or twice a week.

Q. How big orders would he buy at a time?

A. Fifteen or twenty dollars at a time, as a rule; that is my best recollection.

Q. He would buy that much from you every week?

A. Sometimes he would buy fifty or seventy five dollars, he would come in and buy a little from Andalusia, buy a little from our other connections; we had four or five other
1934 connections there. He usually buys fifty to two hundred dollars a week.

Q. Buys from fifty to two hundred dollars per week?

A. Yes sir.

By Mr. Haycraft: Q. Do you mean now or at that time?

A. Now is what I had reference to.

By Mr. Horton: Q. I am talking about the Andalusia Packing Company, that you were selling for?

A. I just told you he bought that much from the different connections, he did not take that much of the Andalusia Packing Company, I just made that statement.

Q. How much did he buy of the Andalusia Packing Company products?

A. I don't know, but it would run probably twenty-five to fifty dollars.

Q. That is per week?

A. Yes sir. I have not investigated it, I have not looked up the records since 1917.

Q. Twenty-five to fifty dollars?

A. Yes sir.

Q. Per week?

A. Yes sir.

Q. That would either be on the ledger or be in the cash account?

A. Yes sir.

Q. Now, A. M. Romeo, he was a good customer of yours, was he?

1935 A. He was a little bit larger buyer than his brother.

Q. How much would he buy from you per week?

A. About the same quantity, or probably a little larger quantity.

Q. Litte what?

A. Little larger quantity.
Q. This is all Andalusia products?
A. That I have reference to?
Q. Yes.
A. Yes sir.
Q. Now, would he buy twenty-five to fifty dollars a week or would he buy more?
A. I would estimate it at that, the best that I can remember now, yes.
Q. Twenty-five to fifty?
A. Yes sir.
Q. Think thirty-seven and a half would be a fair average?
A. I would estimate it right at that figure, yes sir.
Q. Now, Sloan Brothers of Avondale, were they one of your good customers?
A. No sir.
Q. Well, what did they buy from you?
A. I think I told you that they did not buy anything, on that sheet there.
Q. Did not buy anything?
A. Yes sir, that is my recollection of it.

1936 Q. Now, F. M. Word, how much would he buy from you in a week?
A. He did not buy anything from us.
Q. I thought you said you sold him here before?
A. I think you are mistaken on that; no, F. M. Word, I did not sell him.
Q. Pete Nadona, how much would he buy from you in a week?
A. He bought a little cash stuff occasionally.
Q. How much a month would he buy?
A. I would not be able to say.
Q. What is your best judgment on it?
A. Probably fifteen dollars.
Q. Fifteen dollars a week?
A. Probably, I don't know; you understand, I had about three to five hundred customers on my books at that time, that is four years ago, I cannot remember back there without refreshing my recollection from some book records.
Q. He was C. O. D. entirely, would not be in the ledger at all, would he?
A. No, I don't think he would be at all.
Mr. Haycraft: Mr. Examiner, I wish to object to this line of examination. Counsel for the respondent has complete

access to all the records which will show the accounts of the Andalusia Packing Company in Birmingham. It is most unfair to cross examine this witness as to what accounts and how much pork he sold each one of these customers
1937 back in 1916 and '17, when counsel for the respondent has all that information available at his elbow; he has given his best recollection as to the names of those customers; now, the amounts, of course, are in the records, the records will show.

Mr. Horton: What records will show, Mr. Haycraft?

Mr. Haycraft: The ledger records will show your customers' accounts.

Mr. Horton: This witness says that is not in the ledger records, it is a cash account; he sold all these customers; he has testified that he sold them.

Mr. Haycraft: Are you only asking him about those that are not in the ledger?

Mr. Horton: I am asking him about the customers, to see what he knows about them; it is proper cross examination.

Q. How much would you sell the Palace Market a week, Mr. Allen?

A. I would not sell them very much.

Q. They are small customers?

A. Yes sir.

Q. How much would you think that would amount to?

A. Probably twenty-five to thirty dollars a week.

Q. That is on the average?

A. Yes sir.

Mr. Haycraft: Did you make a ruling on my objection, Mr. Examiner?

Examiner Sadler: The objection will be noted.

1938 Q. Now, Mr. George?

A. N. George was a C. O. D. customer.

Q. How much would you sell him per week?

A. Probably sometimes he would come in and buy a tub of lard, then the next week he would buy about the same quantity, or a ham or two.

Q. How much would you sell him per week?

A. About fifteen or twenty dollars, maybe more than that, I am just guessing at it when I say that.

Q. All right, do you want us to understand when you say you are just guessing that you don't know anything about this?

A. I cannot remember these figures to save my life, sir, you know that.

Q. Well, here is the proposition, Mr. Allen, we have only named one, two, three, four, five customers, and we have got up to about two hundred dollars a week already?

A. Yes sir.

Q. Now, your cash book shows that your cash sales—you have testified that your cash sales do not run over that much a week?

A. I did not testify to any such thing, sir, I beg your pardon. I told you the cash sales would run anywhere from fifty to one hundred and fifty dollars a day.

Q. All right, I beg your pardon, that is what you did testify to, I thought you said per week. Now, I will ask you to examine this book that has been marked Commis-
1939 sion's Exhibit No. 200 and point out to me some day in the month of January, 1917, when the cash sales ran $150 per day?

A. You don't want September, 1917, now.

Q. Take January, that would be your best month.

A. There is one $137, one item, a day.

Q. Tell me how many days in the month it runs $150 per day in that month?

A. I don't see any day in January where it runs as high as one hundred and fifty.

Q. That is one of your biggest months, too, isn't it?

A. No sir, that was not, that was just when we were getting started.

Q. What month would you say was your biggest month?

A. I would say, March, April, along in there.

Q. What was the largest day you found in January, Mr. Allen?

A. $132 there one day.

Q. Lots of days you don't find any?

A. Yes sir. These small customers there were not all cash sale customers that you called off there a while ago.

Q. Now, I will ask you to look at the month of March, and tell me if you can find any day in there in which you can find as much as $150?

A. There is $146.57 on the 6th day of March.

Q. All right, find one that goes $150.

A. You don't want anything under $100? $93.91 on
1940 the 5th day. There is $152.50 on the 13th day of March.

Q. All right, that is one day, now find some others.
A. That is all that reached $150.
Q. There is some days there is not anything?
A. Some days there is not anything.
Q. Some days there is only seven or eight dollars?
A. And a great many days it is around one hundred dollars.
Q. Do you wish to revise your estimate now or do you still wish your estimate of fifty to one hundred and fifty dollars to stand, Mr. Allen?
A. My estimate, as I said, as near as I could get at it, was fifty to one hundred and fifty dollars.
Q. After looking this book over for one of your heaviest months, you still want your estimate to stand all the way through, that from the time this book, this cash book starts until it stops, that the cash sales averaged from fifty to one hundred and fifty dollars per day?
A. Yes sir, some days I did not have any, of course, that is understood always.
Q. That is the way you want your answer to read?
A. Not every day in the week, no.
Q. Your answer is it will average from fifty to one hundred and fifty dollars per day, after looking this record over for the heaviest month, do you still want your answer to stand that way, Mr. Allen?
1941 A. As near as I can say without refreshing my recollection, it would have to stay that way.
Q. That is your judgment on it?
A. Yes sir.
Q. That is the best answer you could give?
A. There is a good many days where it would run three or four hundred dollars.
Q. You are trying to give the Commission the facts as you see them?
A. Yes sir.
Q. You want to tell the Commission that that is the best evidence that you can give with regard to what your cash sales ran every day?
A. That is the best I can estimate it.
Mr. Haycraft: Mr. Examiner, I submit that the book itself is the best evidence here; Mr. Allen testified that is his best recollection; he has not refreshed his recollection, but the book itself will naturally stand as the best evidence.
By Mr. Haycraft: Q. You would not want your memory

to be better evidence than the book itself, would you, Mr. Allen?

A. No sir, in fact, I have not got a very good memory of those things, because I could not hope to remember those things; no man could.

Examiner Sadler: I think the book will speak for
1942 itself; it has been admitted.

Mr. Horton: All right, but the book does not speak for the estimates, and if he has estimated all the rest of these estimates like he has those from this book, I think the Commission is entitled to know it.

Mr. Haycraft: What other estimates have you reference to, Mr. Horton, what estimates has he made?

Q. Mr. Allen, was Mr. J. W. Carroll of Boyles, Alabama, one of your good customers?

A. Yes sir.

Q. How much would his business average per week?

Mr. Haycraft: Now, I object, Mr. Examiner, he is reading from a pamphlet he has in his hand which shows the exact record, taken from his ledger record, which is here and can be put into evidence.

Mr. Horton: You are assuming, Mr. Haycraft, making some very broad assumptions that I do not wish to go unchallenged.

Examiner Sadler: Have the books been admitted in evidence, the ledger books?

Mr. Haycraft: They have been identified as exhibits, marked as exhibits for identification; if the respondent wants to put this evidence in, we gladly accept it, put it in here, let the record show how much has been sold to each one of these customers that has been named here this afternoon,

but to use that paper there to cross examine this wit-
1943 ness as to sales made four years ago is most unfair.

Mr. Horton: Read my question.

Examiner Sadler: I think if the books are available, the Commission is entitled to have them introduced in evidence.

Mr. Haycraft: I wish to point out, Mr. Examiner, in further support of my objection, that this witness was put on here to testify as to the customers he sold, not to the amount he sold to the customers, to refute testimony offered by witnesses for the respondent this morning which did not say how much Swift & Company sold; he merely said he was selling them.

Mr. Horton: Now, here, Mr. Examiner, I will not have any

more of this interrupting me with the witness. If you want to protect this witness withdraw him from the stand. I want you to understand that this witness has been put up by the Commission to show that he sold all these accounts.

Mr. Haycraft: Yes sir.

Mr. Horton: And to say that he did not sell these small accounts. I propose to cross examine him on that, and I don't propose to be interrupted any further.

Mr. Haycraft: What are you going to do about it?

Q. Did you say Mr. Craig was one of your big accounts?

A. No, I did not, I said he was a good customer.

Q. You said he was a good customer?

A. Yes sir.

Q. How much would you sell him a week?

1944 Mr. Haycraft: Mr. Examiner, I object to that question.

Examiner Sadler: Well, I understand the witness wants to be put on record that he don't know the amount; if he knows he can say so.

A. I don't know the amount.

Q. Don't know the amount you sold them?

A. No sir.

Q. How about Corey & Falkner?

A. I sold them.

Q. Do you know how much you sold them?

A. No, I don't.

Q. Was he one of your good customers?

A. He was a good customer, yes sir.

Q. He was a big buyer?

A. No sir, he was not.

Q. Well, would he average fifty dollars a week?

Mr. Haycraft: I object to that.

A. I could not tell you that, except by estimating it, I don't remember; I could not tell you about that, sir.

Q. Can you give us an idea on it?

A. I would guess fifty dollars a week, that is just a guess, of course.

Q. Fifty dollars a week?

A. Yes sir.

Q. That is what he buys?

1945 A. Yes sir.

Q. That was a ledger account, too, wasn't it?

A. Yes sir.

Q. Buy that every week?

A. Yes.
Q. And Griffin Brothers of Eastlake?
A. Small customers.
Q. How much would they average?
A. I could not tell you.
Q. Fifty dollars a week?
A. I don't think so.
Q. Twenty-five dollars a week?
A. Probably.
Q. Would they buy every week?
A. Not every week, no sir.
Q. Now, J. D. Love?
A. Small customer.
Q. How much would he buy from you?
A. I could not tell you.
Q. How much would his account average a week?
A. I could not tell you, I do not know.
Q. Would it average fifty dollars a week?
A. I should not think so, probably fifteen or twenty, maybe.
Q. Fifteen or twenty dollars a week?
A. Yes sir.
1946 Q. Would he buy from you every week?
A. That would be just an estimate. No, he did not.
Q. Philip Sezousa?
A. I don't know Sezousa.
Q. Lezuza?
A. Lezuza?
Q. Yes?
A. He bought a little stuff, small customer.
Q. A small customer?
A. Yes.
Q. How much would he buy a week?
A. Probably twenty-five dollors a month, maybe thirty, was about his size.
Q. Bought every month from you?
A. Probably every month; I don't know whether he bought from the Andalusia Packing Company every month we have had the account or not; I could not say that.
Q. The Norwood Grocery?
A. Sold them rather regularly; fair sized customers; small people.
Q. How much would they average?
A. I would not be able to say off hand.

Q. Twenty-five dollars a week?
A. I would estimate that.
Q. Did they buy from you right up to the time you quit handling the product?
1947 A. I could not say that.
Q. What do you recollect?
A. I just recollect that we sold them during the time we had the account.
Q. Did they buy from you in June or July, 1917?
A. I could not tell you.
Q. Buy from you in June, 1917?
A. I could not tell you.
Q. Did they buy from you in May, 1917?
A. I could not tell you.
Q. Did they buy from you in April, 1917?
A. I could not tell you.
Q. How?
A. I could not tell you.
Q. Did they buy from you in March, 1917?
A. I could not tell you.
Q. Did they buy from you in February, 1917?
A. I could not tell you.
Q. Did they buy from you in January, 1917?
A. I could not say.
Q. Did you sell them anything at all in 1917?
A. Yes sir, I think we did, I am not positive about it.
Q. You think you sold them some in either January, February, March, April, May or June or July, 1917?
A. Yes, I know I sold them some of the Andalusia
1948 Packing Company goods, but when it was I am not in position to say.
Q. Now, J. E. Davis, you sold him?
A. Yes sir.
Q. And his name will be on the ledger?
A. Yes sir.
Q. F. E. Meyer, you sold him?
A. Yes sir.
Q. His account will be in the ledger?
A. Yes sir.
Q. Corey and Falkner?
A. Yes sir.
Q. His name will be in the ledger?
A. Yes sir.
Q. J. G. Dickerson?

A. Yes sir.
Q. You sold him?
A. Yes sir.
Q. And his name will be in the ledger?
A. Yes sir.
Q. The Avondale Grocery, that account will be in the ledger, will it?
A. Yes sir.
Q. Pharo Grocery, that account will be in the ledger?
A. Yes sir.

Q. Mrs. Wood, will her account be in the ledger?
1949 A. I am not positive about that; I think we sold Mrs. Wood C. O. D. did not sell her but very little goods.

Q. Well, the next is Shelby & Company, will their account be in the ledger?
A. Yes sir.
Q. Have a ledger account, have they?
A. Yes sir.
Q. Sessman?
A. Lessman Brothers.
Q. Pardon me?
A. Lessman Brothers.
Q. Lessman Brothers?
A. Yes sir.
Q. L-e-s-s-m-a-n?
A. Yes sir.
Q. Will Lessman Brothers account be in the ledger?
A. Yes sir.
Q. Now, W. M. Wording?
A. C. O. D. customers principally; we sold them a little flour and stuff like that.
Q. Will his account be in the ledger?
A. Yes—no, it will not.
Q. W. S. Mallory, will his account be in the ledger?
A. I don't think we sold Mallory.

Q. Well, I think you said before you sold him; it is
1950 not marked off here; do you want to have your answer stand no sir, you did not sell him?
A. Yes, I don't think we sold him.
Q. Now, J. L. Thornton, will his account be in the ledger?
A. Yes sir.
Q. D. C. Rice?
A. Yes sir.

Q. His account will be in the ledger?
A. Yes sir.
Q. Brown Grocery Company?
A. Yes sir.
Q. That account will be in the ledger?
A. Yes sir.
Q. Burris & Son?
A. Big customer, yes sir.
Q. That will be in the ledger?
A. Yes sir.
Q. It will be under the name of Burris & Son will it?
A. Burris Grocery Company; J. B. Burris & Sons, I think it was at that time, J. B. Burris & Sons, I think it was at that time.
Q. That is the way it will appear in the ledger?
A. Either that or the Burris Grocery Company; it is one and the same concern.
Q. Woodlawn Mercantile Company?
A. Yes sir.
1951 Q. Is that the way that account will appear in the ledger?
A. Yes sir.
Q. Robert L. Lewis?
A. I did not sell him.
Q. You did not sell him?
A. No sir.
Q. J. W. King?
A. Cash customer, will not show in the ledger. It might be on the ledger, but it is just one or two little sales that he held over for some reason; I think it does show on the ledger, if I remember right. I know it did on mine.
Q. Mr. Kirby?
A. Yes.
Q. That is the way that account will appear in the ledger?
A. Yes, L. E. Kirby is what it ought to be, I think.
Q. Mr. L. E. Kirby?
A. Yes sir.
Q. Kirby?
A. Yes sir.
Mr. A. Yarborough?
A. Yes.
Q. Both those accounts will be in the ledger under those names, will they?
A. Yes sir.

Q. S. E. Lefler?

1952 A. Lefler, he was a cash sale customer.

Q. T. C. Burgess?

A. His name will appear on the ledger.

Q. His name will be on the ledger?

A. It did on mine.

Q. Mrs. Frank Trongolli?

A. I think that was a C. O. D. customer.

Q. H. J. Romeo, will his account be on the ledger?

A. In the ledger.

Q. E. F. Romeo?

A. On the ledger.

Q. And will show all the sales made to him?

A. For the Andalusia Packing Company, yes sir.

Q. That is, where you have got a ledger account that will show all the sales made to those people?

A. Yes sir.

Q. A. M. Romeo?

A. On the ledger.

Q. J. B. Buchanan?

A. C. O. D. customer.

Q. Grimes Brothers?

A. He will show on the ledger; usually paid for his stuff cash, but did not always do it, and there is always an account there for him.

Q. Norwood Grocery?

1953 A. On the ledger.

Q. D. A. Barton—no, I beg pardon, J. D. Benton.

A. J. E.?

Q. J. W. Borden, I guess it is?

A. I didn't sell him.

Q. J. C. Benton?

A. Yes, we had a customer by the name of Benton, that was J. D. originally.

Q. Yes, well, it is either J. C. or J. D. Benton.

A. Yes sir.

Q. His account will appear on the ledger?

A. Yes sir.

Q. Charles Baldona?

A. Yes sir, he was C. O. D. at that time with us, though

Q. His account will appear in the ledger?

A. No, it will not.

Q. He was cash?

A. Yes sir.

Q. Chandler & Company?
A. On the ledger.
Q. On the ledger?
A. Yes sir.
Q. They had two stores?
A. Yes sir.
Q. Cragin Grocery Store?
1954 A. That is wrong; that should be Craig Coal & Grocery Company; that is what he put down; it is Craig Grocery & Coal Company, I believe it is; that will appear on the ledger as Craig & Boles, or Craig, it has been changed two or three times.
Q. All right, that will appear on the ledger?
A. Yes sir.
Q. Now, Mr. Allen, you wish to have your testimony appear that Mr. J. T. Hackney is mistaken when he says that he bought Andalusia meat—
A. Yes sir.
Q. At five or six cents a pound under the market?
A. When he bought it from me, yes sir. If he says he bought it from me for that he is mistaken.
Q. You never sold it that cheap?
A. No sir.
Q. You always got a good price?
A. Yes sir.
Q. You got the western price all the time?
A. Not altogether, no.
Q. Practically all the time, is that the way you wish your testimony to appear?
A. With the small trade we did; with the large trade we shaded it sometimes, in quantities.
Q. How much would the shade be?
A. We would shade it sometimes a cent a pound;
1955 sometimes two cents a pound, depending on the amount of stuff we had on hand.
Q. Two cents would be the biggest shade you made, the maximum?
A. Yes sir; a great many cases we got the market price, a good many cases.
Q. You always showed a profit for the plant down there?
A. I don't know about that.
Q. Well, they gave you a billing price, they would bill it to you at the market price, and you would always get the price?

A. I don't know, we did not even run out the figures, we put down the price, but as I remember it, there was no extension ever made, if there was I don't remember it, we never ran it out, closed it out to see how it closed out.

Q. Who paid the freight?

A. They paid the freight.

Q. Who paid the drayage?

A. Here?

Q. Yes?

A. We furnished our own drays.

Q. Who paid the icing charges, if any?

A. In transit?

Q. No, for instance after you had it here?

A. We did.

Q. Who paid the storage charges?

A. We did.

Q. You did?

1956 A. Yes sir.

Q. Now, you always sold this out right promptly, this meat when you got it in here?

A. No, I didn't say that; we sold it out, as a rule, within two or three days after it came in; when we first began we sold it promptly; we delivered it promptly.

Q. Were you able to take the car and sell it right out, or would you have some left over that was getting pretty old on your hands?

A. None that I recall, no sir, never had any that was getting pretty old.

Q. Did not use any of these shops around the central part of the city as clean up men to clean up the balance of the car that you could not sell? At a reduced price?

A. No.

Q. Never sold Mr. McIntyre that way?

A. Oh, we probably sold—not that way—but probably sold large quantities at reduced prices.

Q. At greatly reduced prices?

A. No, not at greatly reduced prices.

Q. How much?

A. Probably a cent a pound.

Q. Probably a cent a pound?

A. Yes sir.

Q. That would be the most you would sell it under western meat?

1957 A. No, I said a while ago, we would sometimes make it two cents a pound.

Q. You would sometimes make it two cents a pound?

A. Yes sir, that is about the biggest shade we ever did make, as far as I can recollect.

Q. Two cents is the most shade you ever made?

A. Yes sir, as far as I can recollect.

Q. You never sold Mr. Lee McIntyre any?

A. Yes sir, sold him plenty of it.

Q. Did you ever sell at more than two cents a pound?

A. I don't recall that we ever did, no; don't think we ever did.

Q. Would you swear that you never did?

A. No.

Q. Would you swear that you never sold Mr. C. B. McIntyre pork at five or six cents a pound under the western market?

A. Yes sir, I certainly would.

Q. Would you swear that you never sold him pork at four cents a pound under the western market?

A. Yes sir, I would.

Q. Would you swear that you never sold him pork at three cents a pound under the western market?

A. I would not swear that because we might have in one or two isolated cases.

Q. Will you swear that outside of one or two isolated cases you never sold Mr. McIntyre any at that price?

1958 A. Yes sir.

Q. That is Mr. C. B. McIntyre?

A. Yes sir, or Lee either.

Q. Will you swear that except in one or two isolated cases you never sold Mr. Lee McIntyre anything at less than three cents a pound under the western price?

A. Yes sir.

Q. Or under two cents a pound. Do you know an old man by the name of Ginsburg out here?

A. Yes sir.

Q. Did you ever sell him any meat?

A. Yes sir.

Q. What was it you sold him?

A. Nothing from the Andalusia Packing Company.

Q. Nothing from the Andalusia Packing Company?

A. No sir.

Q. Never sold him anything at all from the Andalusia Packing Company?

A. No sir.

Q. Do you know a gentleman by the name of Mr. Lewis?

A. What Lewis?

Q, Birminigham Packing Company?

A. Yes sir.

Q. Alabama Packing Company?

A. Yes sir.

1959 Q. Did you ever sell him any meat?

A. No sir,—yes, we have sold him some at different times.

Q. Andalusia meat?

A. Yes sir, and Andalusia meat.

Q. All right, what price did he pay you for it?

A. I don't know.

Q. Well, would it be the western price?

A. They bought so much I think probably it was a little under the western price.

Q. A little under?

A. Yes sir.

Q. Never sold him—will you swear that you never sold him anything for less than two cents under the western price?

A. Except probably in one or two isolated cases; we might have had more on hand.

Q. Three cents would be the most?

A. Yes sir.

Q. That would be the most at any time?

A. Yes sir.

Q. Did you ever sell him any meat to put into the tank?

A. No sir.

Q. Any of the Andalusia meat?

A. We did not have any of the Andalusia meat to go into the tank, no sir.

Q. What is that?

1960 A. We did not have—I don't suppose our entire losses for the entire period we handled it was over five hundred pounds, and most of that was stuff that went out, and went bad after it got out and we had to take it back.

Q. Well, you did have stuff come back now and then?

A. Probably eight or ten packages, maybe a few more.

Q. That would be all, eight or ten packages?

A. Yes sir.

Q. And these cars always came in on time, never got delayed?

A. We had an occasional delay, yes sir.

Q. An occasional delay?

A. Yes sir.

Q. What would be the biggest delay?

A. From nine o'clock in the morning to four o'clock in the afternoon, probably, five o'clock.

Q. That is the most delay that you remember?

A. That is as I remember.

Q. This was in 1917, wasn't it?

A. '16 and '17.

Q. Just at the time the railroads were almost broken down?

A. No sir, that was before the period that they were broken down, as I remember it.

Q. Isn't it true that there was a general break down of the railroads in the early part of 1917?

A. Not on the L. & N. Railroad, there was not.

1961 Q. Isnt it true that there was a general breakdown all over the country?

A. In '18.

Q. And isnt it true that freight cars were very scarce?

A. I dont remember right now, sir, about '17; I know we had a great deal of trouble in 1918, and a great deal of it is 1919.

Q. Didnt you have trouble in 1917?

A. I dont recall any.

Q. You dont know of any?

A. I dont recall any.

Q. Well, if a well informed railroad man will testify that the railroads were overtaxed in 1917, then will you say that you had any trouble?

A. I would say that I dont remember it, yes sir.

Q. Your cars always came through on time?

A. My cars always came in on time until 1918, that is the first trouble that we began to experience.

Q. You are one of the few packers that never had any meat returned?

A. No sir, I did not say that; I said with the Andalusia account.

Q. Now, Mr. Allen, assuming that this entire record shows that witnesses that have testified in Atlanta, at Atlanta a large number, at Jacksonville, Florida, at Pensacola, Flor-

ida, at Moultrie, Georgia, and at Andalusia Alabama, and at Birmingham, and they have all agreed that this
1962 western pork sells for from two to four cents under the market—I mean southern pork, soft pork, sells from two to four cents under the market, and assuming further that the Federal Trade Commission has issued a report in pursuance to a Congressional resolution, asking for an investigation, and they in their report have shown reasons why the soft pork sells at a less price than the western pork, now, do you still insist that you were the man that could get what nobody else can do, that is, that you can sell the southern pork for the same price you can the western pork?

Mr. Haycraft: Mr. Examiner, I object to counsel asking any such question as that, because he is assuming facts which are not absolutely shown in the record; there is testimony contrary to that.

Mr. Horton: I dont blame counsel for the Commission for trying to protect the witness at this point.

Mr. Haycraft: I am not trying to protect the witness, I am merely trying to get counsel to keep his question in line.

Examiner Sadler: I think the witness has testified to the best of his knowledge and belief.

Mr. Horton: The witness has not testified to this question at all.

Q. Assuming those facts to be true, Mr. Allen, do you still want your testimony to show that you sold this southern pork for the same price you did western?

A. That I sold it in 1917?

1963 Q. Yes?

A. Yes sir; I did it.

Mr. Haycraft: Now, Mr. Examiner, referring to this question just put by counsel, there were witnesses who testified in this case before that there were times when they got the western price for the southern products, depending upon market conditions; and these facts were not put into counsel's question.

Examiner Sadler: I think the record will speak for itself as to that, and as to counsel's question.

Mr. Haycraft: I am merely objecting to Mr. Horton's question because it did not include all the facts on the record which should have been included in the question.

Q. Well, assuming that ninety per cent of the men who testified have shown that the southern pork does not sell within two to four cents of the price for northern pork, do

you still want to set yourself up as contrary to all that evidence?

Mr. Haycraft: Now, Mr. Examiner, counsel has not designated the time spoken of when this facts or these facts took place. I admit that at the present time, ninety per cent of the testimony did show that there was a two to four cent differential, but I do not admit that ninety per cent of the testimony shows that back in 1916 and '17 that they had to make a two to four cent differential to sell the goods. I want counsel to keep his question within the facts of the case.

Q. Well, then, Mr. Allen, I will ask you this question,
1964 since counsel has objected so strenuously: Was there anything peculiar about this market, or about the condition of the market at that time which made this pork sell readily?

A. I dont suppose there was; we worked hard for the business; we were just beginning to get on our feet.

Q. There must be some explanation of this fact; if you are right, the other witnesses are wrong; if the other witnesses are right, then you are wrong, unless there is some explanation for it, some way in which it can be reconciled. Now, do you want to submit any way in which this testimony can be reconciled?

A. I dont know; I can only testify as to what I did, sir, I know what I did; I dont know what the other witnesses were basing their belief on, or their statement.

Q. Well, were you selling on a market where pork was scarce, Mr. Allen?

A. No sir.

Q. Was it more scarce at that time than it has been since then?

A. No sir, was not.

Q. Was it more scarce at that time than it is now?

A. Yes sir, it was then than it is right now—no, I would not say that, either; it is more scarce—yes it was a whole lot more scarce then than it is now; it is more plentiful now than it has been in years.

Q. It is more plentiful now?

A. Why, sure.

1965 Q. Does pork sell freely on a rising market?

A. Why, sometimes it does and sometimes it does not; it depends on what the man that is selling it believes, and what the man that is buying it believes about the market. It

might be a temporary advance, they might figure it that way, and another one might have more confidence in it; yes sir, if it looked like it was going up I could go out with a whole lot more confidence and more enthusiasm and tell my customers to buy, and they would buy it better.

Q. Assuming that the records of the Andalusia Packing Company show that hogs started off about eight cents a pound in October, 1916 and went up to thirteen cents a pound in July, 1917, would you say that was a rising market for live hogs?

A. Yes sir.

Q. Well, now, if that is the case, then, you were on a rising market all that time, were you not?

A. If it was in all that time, yes; if it had been probably a rise in October, and did not go up any more until July, it would not have been on a rising market all the time.

Q. Assuming that it was a rise that occurred from January 1917 up to July, 1917, and hogs went from eight and a half or nine cents up to nearly thirteen?

A. Depending on when it went up. It might have done it all in one month.

Q. It did not do it all in one month, it went up more 1966 or less gradually?

A. If it went up more or less gradually, it was a rising market.

Q. Is it easier to sell pork in that kind of a market?

A. Yes sir, it is easier to sell pork in that kind of a market; we would have most of our pork sold before it was delivered.

Q. What day of the week did your cars usually get here?

A. Did not have any regular day; we usually tried to get a car in here on Friday for the Saturday's business, then we had one or two cars in between there; sometimes three more cars.

Q. Did you find that you did more business in the winter time than you did in the summer time?

A. It is earier to sell fresh meat in the winter time; it is easier to sell cured meats, better, in the summer time.

Q. Was your fresh meat business better in the winter time?

A. Yes sir.

Q. That would include pigs?

A. Yes sir.

Q. Did you ever have any trouble with your lard?

A. With the first few shipments only.

Q. Did you ever have any trouble with it in July and August 1917?

A. Not with Andalusia lard; I had some lard shipped from Moultrie that I had a good deal of trouble with.

Q. Did you find the Andalusia lard was firm and would hold up?

A. It was not as firm as western lard, but it was firm
1967 enough to hold up.

Q. Did your customers ever complain of it?

A. They did on the first few shipments, not later on.

Q. Did your customers ever complain of the fact that the pork loins were soft and oily?

A. We had a complaint on it occasionally; they were not all soft and oily; sometimes fifty per cent of them were just as firm as they could be.

Q. Now, you are an experienced meat man, are you not, Mr. Allen?

A. I have been in business a while, yes sir.

Q. You have been in the business a long time; you know a soft loin when you see one?

A. Yes sir.

Q. You want the record to show that at least fifty per cent of your pork loins were hard?

A. No, I did not say that. I said I had seen a shipment that showed fifty per cent of them hard; I did not say that all of them showed fifty per cent hard, I did not mean that.

Q. Well, take it over two or three months business, how would it run?

A. There was twenty-five per cent of them would be hard.

Q. There was twenty-five per cent of them would be hard?

A. Yes sir.

Q. Just as good as the western loins?

A. No, I didn't say that.

1968 Q. Good as the Tennessee loins?

A. Yes sir.

Q. As firm?

A. Yes sir.

Q. Was not oily at all?

A. Occasionally you find a box with four or five good ones in it, then you would find, maybe, the balance of the box, hundred pound box, all oily, you could not depend on it.

Q. That would be one box?

A. Yes.

Q. How much of the whole, was seventy-five per cent of it oily, soft and oily?

A. How is that.

Q. Was seventy-five per cent of it soft and oily?

A. I would say that, yes sir.

Q. You would say that?

A. Yes sir.

Q. Did your customers ever complain that they could not cut it?

A. We had an occasional complaint, very few.

Q. Did your customers ever complain it would not hold up? I mean as well as western meat?

A. We had complaints from the smaller merchants more than we did the larger ones; we had some complaints, yes.

Q. Did you ever hear your customers make complaint that they had to tie it down to the block to cut it?

1969 A. No.

Q. Did you ever hear any of your customers say that they could not cut it in front of their customers, that they did not like it?

A. No, I have seen them cut it in front of them.

Q. Did you ever hear your customers say there was more shrinkage in it?

A. I heard some testimony this morning to that effect.

Q. Did you ever hear any of your customers before say any thing about that?

A. No sir.

Q. If they said it you dont recall it, never complained to you about it?

A. No.

Q. Did your salesmen ever come in and make any complaint about the customers kicking about the quality of this meat?

A. No sir, but there was probably a few complaints; there always is, in Western meat as well as southern meat; we all have that to contend with, but not any more than there was in the western meats.

Q. The sum and substance of your testimony is that this meat was just as good as the western meat?

A. I like it better for my personal eating.

Q. Many of your customers the same way?

A. Many of them.

1970 Q. Back in 1917?

A. Yes sir.

Q. Just as leave have it as they would western meat?
A. Yes sir.
Q. Pay you the same price for it?
A. Many of them, yes sir.
Q. Some of them paid you more?
A. Occasionally we would get above the average western market on it.
Q. Well, they paid you more than the western market?
A. Yes sir.
Q. Now you have sat here for two days and you have heard these men come in and testify, do you recall any of them testifying that said that—do you recall any of them testifying that said that southern pork was as good as western pork?
A. Why from Mr. Brown's testimony, I would imagine that he liked it as well. Mr. Thornton, I should say, first.
Q. Mr. Thornton the only one that testified that way that you remember?
A. Well, if I remember right, Mr. Brown spoke very favorably of it.
Q. Did they testify that they would pay the same price for it that they would for western?
A. No, they did not testify that they would do that.
Q. Didn't many of these gentlemen that testified
1971 here say there was a difference in the value of it, and that they could not handle it to advantage at the same price?
A. Yes sir.
Q. Do you think those gentlemen are mistaken or are they just telling a falsehood?
A. Well, I dont believe there is that argument that we used brought bear on it any more; that would help them, that it was an Alabama product; I think that is the only reason they are not pushing it.
Q. Referring to the quality of it now, they have testified that it was not as good quality, some of them have testified—
A. They mostly testified that it was soft.
Q. Soft and oily?
A. Yes sir, soft and oily.
Q. To explain their reasons why they did not want to handle it?
A. Yes sir.
Q. Did not hold up, and had a bad appearance and would not keep as well?

A. Yes sir.

Q. Well, now, are they simply mistaken or are they testifying to falsehoods?

A. Why, I dont know whether they are either; it is just their opinion of the matter; I would not say that they lied about it, and I would not say that they are mistaken about it; they can have that opinion.

Q. Now, assuming that something over fifty wit-
1972 nesses have testified that in their judgment soft and oily pork was not as good as the western pork, and they preferred the western, do you think that those gentlemen are mistaken?

A. That it was not as good, or did not appear as good.

Q. That it is not as good; that it is not as desirable from a marketing standpoint?

A. Well, I dont suppose that from a standpoint of cutting it, putting it out on the block, and the appearance and all, I dont suppose they are mistaken in that at all.

Q. They are correct in that?

A. I will admit that the southern pork does not show up in as good shape in warm weather; most of them testified, you know, that in cold weather it was all right.

Q. Well, is that your opinion, now?

A. Yes sir.

Q. That is your own opinion?

A. Yes sir.

Q. That the western pork—that the southern pork does not hold up as long as the western pork?

A. In the warm weather it is not as good, and it wont hold up as long, I will admit that.

Q. And it wont keep as long?

A. No, I dont believe it will.

Q. It has a heavier shrink?

A. I had very little trouble with the shrinkage on it,
1973 I will be frank with you on that; we had practically no trouble with the shrink at all.

Q. Didnt you find that in warm weather, or even in fairly cool weather, the oil drops out of this meat, drips out?

A. I had some dry salt meat shipped in from Andalusia that showed a gain of 200 pounds after it had been here sixty days; that is it was that much heavier than when we got it. Of course, we rubbed it down with salt, the same as we do all of it.

Q. Put more salt on it?

A. Oh, yes, we always do that.
Q. Where did the gain come from, more salt worked into it?
A. I dont know whether it did; I assume it did.
Q. Well, it would not grow any while you had it?
A. No.
Q. Then the only place it could come from would be from the salt?
A. Yes sir.
Q. Or from moisture?
A. Yes. But as far as the shrinkage is concerned, we have practically no trouble at all on it.
Q. I dont know how many men have testified in this case, Mr. Allen, but I should say it would be somewheres around one hundred and fifty, and your testimony stands out clear and distinct fom those other men to the effect that southern pork is just as good as western pork.

Mr. Haycraft: I object to that question, Mr. Ex-
1974 aminer, that is assuming a fact which is not borne out by the record.

Examiner Sadler: I think the record will speak for itself.
Mr. Horton: The record will speak for itself.
Mr. Haycraft: Wel, the record will speak for itself. but the question wont speak for the record, that is what I am talking about.
Mr. Horton: The record will speak for itself; if I am wrong, the question is of no consequence.
Mr. Haycraft: I object to counsel using as a basis for his question a record which does not show what he says it does.
Examiner Sadler: Read the question.
(Question read)
Q. Do you still wish the record to show that is your judgment?
A. As far as my—
Examiner Sadler: Just a minute.
Mr. Haycraft: Mr. Examiner, I wish a ruling upon my objection. Counsel has placed in here as part of his question an assumption which is not borne out by the record; and I object to it.
Examiner Sadler: The objection will be noted. The witness can give his opinion.
Q. Now, Mr. Allen, you have stated that you are of the opinion now that the soft pork does not hold up as well, that

it shrinks more, and that it is not as desirable from a market standpoint, that is, from the market man's standpoint, is that right?

A. I would think so, yes sir, not quite as desirable;

1975 there is a slight difference in it.

Q. You think I have fairly stated the position that you take now?

A. Yes sir, there is a slight difference in it.

Q. Well, now, when did you reach that conclusion?

A. I reached it before we quit handling the Andalusia Packing Company's goods.

Q. What caused you to reach it?

A. I suppose the few complaints that I had coming it.

Q. What?

A. The few complaints that I had coming in.

Q. Complaints from your customers?

A. About the goods being flabby or oily; it would have no reference to shrink; ye might have had a few but not very many.

Q. Now, on the matter of the salesmen you had employed, Mr. Baugh and Mr. Bauer, they worked for you all the time you handled the Andalusia account?

A. No sir; Mr. Baugh did but Mr. Bauer did not.

Q. When did Mr. Bauer start?

A. I think it was November; I am not sure.

Q. November, 1916?

A. Yes sir.

Q. And continued with you?

A. Yes sir.

Q. Where is Mr. Bauer now?

A. He is with me.

1976 Q. He is with you?

A. Yes sir.

Q. Mr. Baugh with you too?

A. No sir.

Q. Where is Mr. Baugh?

A. Mr. Baugh is—I suppose he is here in Birmingham; I have not seen him lately.

Q. Who is he working for?

A. Edgar Morgan Grain Company, I think.

Q. Who?

A. Edgard Morgan Grain Company, Memphis, Tennessee; I understand he is there; I am not sure.

Q. When did Mr. Chapin start with you?

A. Who?
Q. Mr. Chapin?
A. I dont remember; dont know what months he worked at all.
Q. Well, was he there in 1916?
A. He was only there a few months, I dont remember when; I am not sure about that.
Q. Was he here in 1917?
A. I dont know; it was either 1916 or '17, or maybe part of both years, I dont know just exactly the months, I cannot tell you at all.
Q. You are sure it was when you handled the Andalusia account?
A. How is that?
1977 Q. You are sure he was with you at the time you handled the Andalusia account?
A. Yes sir, I am positive of that.
Q. He was there how long?
A. Just a few months; I dont know how long exactly.
Q. Just a few months, what do you mean by a few months?
A. Maybe three or four; maybe five or six, I dont remember at all.
Q. Would it be sometime between January and July of 1917?
A. Between September 1916 and September 1917 is the best I can give it to you.
Q. September 1916 and September 1917?
A. Yes sir.
Q. How about Mr. Mikwee?
A. He was there some time during that time, too.
Q. How many months did he work for you?
A. I dont know.
Q. How many months would you say?
A. Probably four months, maybe more.
Q. In your previous testimony you said these gentlemen were there six months, which is correct?
A. I dont know just how long, I said the best of my knowledge.
Q. Was it four or was it six?
A. I expect about six.
Q. About six?
1978 A. Yes sir, something like that.
Q. Was it about six or was it about four?

A. Three or four or five or six months, how many I could not tell you.

Q. It is three or four or five or six now; do you wish to change your former testimony?

A. If you call that changing it, yes sir.

Q. Three or four or five or six months?

A. Yes sir.

Q. That would be from September 1916 to September 1917?

A. Some time in that time.

Q. Would it be in the busy season?

A. I dont know when they were there.

Q. I think you testified before it was during the busy sason, didnt you?

A. No, sir, I did not.

Q. When would your busy season be?

A. When would the busy season be? I dont notice any difference in it.

Q. When was your busiest months when you were handling the Andalusia Packing Company account?

A. I dont know because we have other accounts that go along with the business.

Q. Is it July and August, are those your busy months?

A. On the Andalusia business, you mean?

1979 Q. Yes?

A. On the Andalusia business probably July and August were the dullest months.

Q. July and August were the dullest months?

A. Yes sir.

Q. All right, what would be the heaviest months on the Andalusia business?

A. Probably January, February, March and April.

Q. All right.

A. Probably would be December.

Q. You increased your sales force to take care of your increase in business?

A. Not necessarily so at that time, no; we were just getting started in business; I was adding to it as I could see my way clear to take care of another salesman.

Q. How many salesmen have you right now, Mr. Allen?

A. I have got five salaried salesmen, and four brokers that work exclusively for me.

Q. How many did you have in 1920?

A. Four salaried salesmen and three brokers, I believe

it was, I am not positive about that; probably five part of the time.

Q. How many did you have in 1919?

A. We had three salesmen; had four part of the time, and three part of the time, and had two brokers.

Q. How many did you have in 1918?

1980 A. About the same force.

Q. About three or four salaried salesmen?

A. It was either three or four.

Q. And two brokers?

A. Yes sir.

Q. All right, now, did Mr. Chapin stop working for you?

A. No sir.

Q. He is still working for you?

A. No sir.

Q. When did he stop?

A. He did not stop; I fired him.

Q. When did you fire him?

A. I dont remember that.

Q. Was it in 1917?

A. It was some time after he worked for me there; I dont remember the year. I could not tell you the year.

Q. Well, it would be 1917?

A. I cannot remember; dont know whether he worked any in 1916, or maybe part in 1917.

Q. When did Mr. Mikwee stop?

A. I cannot recall that; I cannot recall that; it is very indefinite in my mind.

Q. Was he with you in September 1917?

A. I could not say whether he was or not; no sir.

Q. Was he with you in—

1981 A. I dont know, I could not tell you.

Q. Was Mr. Mikwee and Mr. Chapin with you in 1918?

A. No, neither one of them was.

Q. Neither one of them was?

A. No.

Q. Not at all?

A. No, Mikwee worked for me afterwards, after he started in, after he worked for me the last time, for me, 1919, 1920, last year.

Q. Is he working for you now?

A. No sir.

Q. Now, have you enlarged the facilities down there at your house, your place of business?
A. Have I enlarged them?
Q. Yes sir.
A. Since what time?
Q. I say have you enlarged them, have you improved them?
A. You mean since what time?
Q. Well, any time, when did you improve them?
A. I have not improved them myself; I got a larger place.
Q. You got a larger place of business?
A. Than I formerly had, yes sir, when I had the Andalusia account?
Q. Where was you when you had the Andalusia account?
A. Morris Avenue.
Q. Morris Avenue?
A. Yes sir.
1982 Q. What street are you on now?
A. On First Avenue.
Q. You moved from Morris Avenue over to First Avenue where you got a larger place?
A. Yes sir.
Q. When did you move?
A. Moved in June, 1918.
Q. June, 1918?
A. Yes sir.
Q. Were you handling any fresh meat while you were on Morris Avenue?
A. Yes sir.
Q. What accounts did you have?
A. Had Andalusia first.
Q. Yes sir. Then what account did you have next?
A. Had the Bullock Packing Company later.
Q. When did you get the Bullock Packing Company?
A. About two months after—that would be somewhere,—
Q. About two months after you stopped handling Andalusia?
A. Yes sir.
Q. November, 1917?
A. Yes sir, that is my best recollection of that.
Q. Then in December, 1917, was you still handling Bullock?
A. Yes sir.
Q. Did you take another account on?

1983 A. We had another account, all western account; no southern account.

Q. Western account?

A. Yes sir.

Q. What western account did you have?

A. At that time I think we had the Wilson Provision Company of Peoria, and the Sinclair Sales Company of Cedar Rapids; during that time we had Hammond Standisch; I dont remember just the dates on that.

Q. What accounts—when you were handling the Andalusia account, what accounts were you handling besides Andalusia?

A. Wilson Provision Company was one, and I think Sonclair was the other, maybe Hammond Standisch Company was along about that time; we had it at the same time we had either Andalusia or Bullock.

Q. Did you sell any fresh meat for the Wilson Provision Company or the Sinclair Company, or Hammond Standisch; none for Sinclair.

A. We sold a few cars for Wilson. None for Hammond Standisch; none for Sinclair.

Q. When did you sell a few cars for the Wilson Provision Company?

A. About the time we discontinued for Andalusia; probably four or five weeks afterwards.

Q. Then you had Wilson Provision Company and the Bullock Packing Company in November, 1917?

A. I think that is correct.

Q. And you were handling fresh meat for both?

1984 A. No, we only handled one or two cars from Wilson; they could not furnish us the stuff we wanted here.

Q. But you had that in between the time you left off with the Andalusia and the time you started with the Bullock?

A. Yes, we got one or two cars from them; then we got the Bullock; maybe just one car of them at that time.

Q. When did you get the next fresh meat account?

A. I think it was 1918.

Q. What month?

A. Maybe 1919.

Q. What month in 1919?

A. I could not remember the dates on it; it was the latter part of 1918 or the early part of 1919.

Q. What account was that?

A. Iowa Packing Company.

Q. Iowa Packing Company?
A. Iowa Packing Company.
Q. Have you been handling that account ever since?
A. Yes sir.
Q. What accounts are handled by you now?
A. Iowa Packing Company and Sinclair; Sinclair Sales Company.
Q. Sinclair?
A. In meat?
Q. Pardon?
A. In meat, that is what you wanted to know, in packing house
1985 Q. Yes. Now, do you handle anything else besides meat and packing house products?
A. Yes sir.
Q. What other lines do you handle?
A. Handle flour, feed, cheese, butter.
Mr. Haycraft: Mr. Examiner, I object to the form of these questions, not proper cross examination.
A. Anything I can make any money out of.
Q. Did you handle any of those things—
Mr. Haycraft: Why beyond the scope of the direct examination.
Mr. Haycraft: Way beyond the scope of the direct examination.
Q. Did you handle all those things—
Mr. Haycraft: Mr. Examiner, I ask for a ruling on my motion.
Examiner Sadler: I think you are going away out of the scope of the direct examination, and out of the issues of the case. You are getting into the present time, going into this witness' other business.
Mr. Horton: I am just going to ask him one or two questions along this line.
Q. Did you handle those other lines, flour cheese, butter, that you are handling now—
Mr. Haycraft: Mr. Examiner, have you made a ruling on my motion yet?
Examiner Sadler: Just a second. I will sustain the objection.
Mr. Horton: Well, we take an exception. I thought
1986 we had an agreement here between counsel for the Commission and counsel for the respondent that all objections would be made later; what has become of that.

Mr. Haycraft: All except the form of the question; also, that ruling can be terminated any time I think it is going too far; that was the understanding that we had.

Mr. Horton: You wish to terminate the agreement?

Mr. Haycraft: No, I wish to object to the form of the question; it is not a proper question for cross examination.

Mr. Horton: You mean to say that my questions are leading on cross examination?

Mr. Haycraft: They are not proper cross examination; outside of the scope of the direct examination.

Mr. Horton: I thought that was covered by our agreement.

Mr. Haycraft: I did not understand that it was.

Examiner Sadler: Well, the objection was put up to me and I sustained it before any objection was made.

Mr. Horton: Well, according to our agreement counsel has no right to object unless he wishes to terminate the agreement.

Mr. Haycraft: Well, I will terminate the agreement right now, then, and make it again whenever I feel like it.

Mr. Horton: All right, then the agreement is terminated, we will consider.

Mr. Haycraft: You have gone too far; whenever I think you have gone too far I will terminate the agreement.

1987 Mr. Horton: We take an exception and rest.

Redirect Examination by Mr. Haycraft.

Q. Mr. Allen, there were a good many outside towns that you named where you sold goods for the Andalusia Packing Company; how were those remittances made for the accounts that you sold out there, did you collect those or did they go direct?

A. Most of them we collected; some of them went direct, but most of them we collected.

Q. Do they appear in this book here?

A. Yes sir.

Q. Those that you collected?

A. Yes sir.

Q. Those that went direct, of course, would not?

A. No, no, they would not.

Q. Now, on cross examination counsel tried to get you to state the weekly amounts and monthly amounts and daily amounts that you sold these various customers; I will ask

you whether or not you can at this time give anything like a correct estimate of your weekly sales to any of the customers back in 1916 and 1917?

A. I cannot.

Q. What you have stated, and it is a fact that a number of these smaller customers were in and out buyers, that is, they would buy a week, come in one week and be out the next week?

A. They would.

1988 Mr. Haycraft: That will be all.

Recross Examination.

By Mr. Horton: Q. On the outside, these outside towns that you sold to, Mr. Allen, would that pork be delivered here, from Birmingham?

A. Yes sir.

Q. It would come in your cars?

A. Yes sir.

Q. Record of that would be down in that as your consignment account?

A. Yes sir, after we started a consignment account; if the sales were made previous to January, 1917; we did not keep a consignment account.

Q. Anything after January 1st, 1917, would be in your consignment account, that came to Birmingham?

A. I would say that, with few exceptions; a few times we got some orders from customers; I remember one time we got the state of Alabama business, prisoners here, and we had that shipped out from Andalusia; we never did ship it, never did bill it or anything.

Q. You would reship from here?

A. With that exception there.

Q. Yes sir, with that exception.

A. Yes sir, probably one or two other small exceptions, did not amount to anything.

1989 Mr. Horton: That is all.

Mr. Haycraft: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused)

J. M. WOOD was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. Mr. Wood, what is your business?
A. Shipping clerk.
Q. For whom?
A. Swift & Company; Shipping clerk for Swift & Company.
Q. How long have you been?
A. Ever since May 26th last year.
Q. Last year, 1920?
A. 1920, yes sir.
Q. Did you ever work for Mr. E. P. Allen?
A. Yes sir.
Q. When?
A. I went to work there in September, 1916, and left in February, 1917.
Mr. Taylor: What was that answer?
(Answer read)
Q. How many salesmen did Mr. Allen have in 1916 and '17?
A. He had two besides himself.
1990 Q. Who were they?
A. Mr. Bauer and Mr. Baugh.
Q. Do you know a gentleman by the name of Chapin that used to work for Mr. Allen?
A. Yes sir.
Q. Was he ever a salesman?
A. He was a salesman for Mr. Allen when I went to work for him.
Q. Did you know him personally?
A. Yes sir, I knew him.
Q Was he a friend of yours?
A. Yes sir.
Q. Personal friend?
A. Yes sir.
Q. When did he leave Mr. Allen?
A. Why, I dont know just when he did leave him; he worked there about a year after I went there.
Q. After you went there?
A. Yes sir.

Q. Well, would you say he was there in September, 1916, or had he left before that?

A. September, 1916? He was gone before that, some time before that.

Q. All right, now, when he left Mr. Allen what did he do?

A. He went out to Irondale and started running a truck garden out there.

1991 Q. A truck garden out there?

A. Yes sir.

Q. You saw him from time to time after that?

A. Yes sir, I used to see him every once in a while.

Q. How long did he continue with the truck garden?

A. I don't know just how long he ran it, I guess about two seasons.

Q. Then what did he do?

A. The next time I saw him he was a salesman for Marshall, Jordan and Keith branch house?

Q. Did he come there from the truck farm?

A. Why, I dont know whether he was employed any place before that or not, I dont think he was, though; I am pretty sure he left the truck farm and started to work there in the fall.

Q. Then how long did he continue to work for Marshall, Jordan & Keither?

A. I dont know, sir, I think he was there up to the time he died last fall; I saw him from time to time.

Q. Knew him personally?

A. Yes sir.

Q. He was a friend of yours?

A. Yes sir.

Q. You used to see him from time to time?

A. Yes sir.

Q. Did he ever go back to work for Mr. Allen after he quit?

1992 A. No sir, not while I was there.

Q. Did you ever know of him going back to work for Mr. Allen?

A. No sir, I never did.

Q. While you was with Mr. Allen did he have a man by the name of Mikwee working for him, selling for him?

A. No sir.

Q. Not up to the time you left?

A. No sir.

Q. Did you ever hear of such a man selling for Mr. Allen?
A. No sir.
Mr. Horton: That is all.

Cross-Examination by Mr. Taylor.

Q. Mr. Wood, you dont know what salesmen were working for Mr. Allen after you left, do you?
A. No sir, I dont know, I never was down there after I left.
Q. You left there in February, 1917?
A. Yes sir, left there the 24th day of February, 1917.
Q. Did not go back there for some time?
A. Sir?
Q. You did not see Mr. Allen after that for a long time, did you?
A. No sir.
Mr. Taylor: That is all.

Redirect Examination by Mr. Horton.

1993 Q. Just a minute, please. But you do know that Chapin did not go back?
Mr. Taylor: I object to that, he did not say that he did know that.
Examiner Sadler: The objection will be noted.
Q. You may answer, please?
A. I would not be positive that he did not, but I dont believe he did, because while I was working for the express company there, he would be up there to meet the train from New Orleans to see about Marshall Jordan's products would come in on the train for him, I saw him there almost every morning while I was working up there.
Mr. Horton: That is all.
Mr. Taylor: That is all. No, wait a minute.

Recross Examination by Mr. Taylor.

Q. When was it you were at the express company's office?
A. I went to work there on the 15th of March, 1917.
Q. You left or went there?
A. I went to work there on the 15th of March, 1917.

Q. Now, where did you say Chapin went after he left Mr. Allen?

A. He did not work for a time; he ran a little truck garden out at Irondale.

Q. Yes. When was that?

A. I dont remember what year that was, must have been about 1914 and '15, I guess, spring of '14 and '15, must
1994 have been in 1915 he ran the truck garden; he worked about a year for Mr. Allen after I went there.

Q. How long were you with the express company?

A. Well now, I was with them until this past year.

Q. When?

A. The greater part of the time.

Q. When was it you left there?

A. Left there on March 14th, 1920, and when I was in the army, then, for a considerable time, three weeks I worked for the Frisco Railroad.

Q. Three months or three weeks?

A. Three months.

Q. And during the time—

A. Between March—

Q. Between March 1917 to March 1920?

A. Yes sir.

Q. When was it that you were with the Frisco Railroad?

A. I was with them from September 1917 until January.

Q. Until January of what year?

A. 1918, then I went back to the express company.

Q. You went back to the express company in January, 1918?

A. Yes sir.

Q. Now, I will ask you, do you know that Mr. Chapin did not go back to work for Mr. Allen after you left Mr. Allen?

A. After I left Mr. Allen?

1995 Q. Yes?

A. No sir, I would not be positive about that.

Mr. Taylor: That is all.

Mr. Horton: Mr. Allen, have you got your payroll records down there to show when those men worked for you?

Mr. Allen: Yes sir, I think I have.

Mr. Horton: Will you bring them up, please?

Mr. Allen: This evening?

Mr. Horton: Yes sir.

Mr. Allen: I guess I can find them; the boys are all gone now though. If I can find the cashier there that knows where the records are I will bring them.

Mr. Taylor: Now, here, Mr. Horton; all we want is the facts, also. If it is a fact that Mr. Allen may have made a mistake in testifying to this, I am perfectly willing if he will look up that thoroughly and let it come and let it go into the record that he was mistaken.

Mr. Horton: I would like to see the payroll.

Mr. Allen: I wonder if this will do any good: If I was mistaken in Mr. Chapin, I will say this, I had another man during 1917, I know that; the record will show that very plainly.

Mr. Horton: Now, I move to strike out that statement upon the record.

Mr. Taylor: No, I ask that that stay in.

Examiner Sadler: I think you asked Mr. Allen sev-
1996 eral questions yesterday morning in the record; they still remain in the record, and I think this statement should remain in the record.

Mr. Horton: I have not asked him this question.

Examiner Sadler: Well, he is making a correction if he is wrong.

Mr. Horton: Who was your other man?

Mr. Allen: I dont remember his name; we change, just like all the other men.

Mr. Horton: All right, if you will bring up the records Mr. Allen, we will meet you here or any place that is convenient for you.

Mr. Allen: All right, I will see what I can do.

Mr. Horton: Where will you meet us?

Mr. Allen: I dont know how long it will take me to find them, that is four years back; you had better set the place for me: I cannot state the time until I find them.

Mr. Horton: Well, Mr. Examiner, I cannot finish tonight, anyway. I want to put on some more witnesses tomorrow.

Mr. Taylor: Now, Mr. Examiner, I wish at this time to object to the reopening of the respondent's case here; if we are to see-saw back and forth this way, we will never get any place. The Commission is supposed to have put in its case; the respondent has placed his defense in, and the Commission put in rebuttal or reply to the testimony of the respondent, and now that we have done this, I object to
1997 opening the case again. Furthermore, this question of many—of how many salesmen Mr. Allen had employed here is entirely irrelevant, and has nothing to do with the issues of this case.

Examiner Sadler: We can take it up with Washington.

Mr. Taylor: This whole matter was matter that was brought out on cross-examination; was not testified to by this witness on his direct examination.

Mr. Horton: That was brought out on direct examination, for your information, Mr. Examiner, by Mr. Haycraft.

Mr. Taylor: I am quite clear he was not asked how many salesmen he had nor how much goods he sold these people, but merely whether they were customers.

Examiner Sadler: We had better be clear on that, and let the reporter read the record over to us, and be sure of that.

Mr. Horton: Mr. Examiner, it is now six thirty p. m. I had hoped that we could finish tonight, but it is impossible, I wish to put on some more rebuttal witnesses tomorrow morning.

Mr. Taylor: Mr. Examiner, I object to the reopening of this case to put on rebuttal witnesses by the respondent, or rebuttal testimony. I move that we adjourn to Chicago, to convene on August 30th, at 10:00 o'clock in the morning, at the hearing room of the Federal Trade Commission.

Examiner Sadler: Do you want this witness any more?

Mr. Horton: No.

(Witness excused)

1998 Examiner Sadler: I think that everything to be covered has been covered, and that any further evidence in this case would be cumulative evidence, so I will adjourn the hearing to Chicago, ten o'clock, August 30th.

Mr. Horton: Mr. Examiner, I submit that you are unable to judge whether or not everything has been covered in this case or not. You have no information nor nothing to base it on. I further request that if the examiner sees fit to rule against me upon the question of putting in more evidence, that I be given time to take it up with Washington, and that this hearing be held in abeyance, and that the examiner and the attorneys for the Commission stay here in Birmingham until I can get a reply back to my wire, which should be sometime tomorrow.

Mr. Haycraft: Mr. Examiner, you asked counsel a plain question as to what new evidence should be introduced. (Off the record) He answered and the argument was made by counsel for the commission that this was all refuted, and based your ruling upon that, and I submit that the record should stand.

Mr. Horton: To meet any objection that Mr. Haycraft

may raise to that, I will state that I wish to call several witnesses, by whom I will prove that Mr. Allen repeatedly and continually sold Andalusia pork for four, five and six cents under the market price of western products.

Mr. Haycraft: Mr. Examiner, he has put those witnesses on the stand; further evidence of that kind would be purely cumulative.

1999 Mr. Horton: And further, I wish to state at this time that I expect to call other witnesses who will testify to the fact that there is keen competition in this market, further, that competition has been increased since Swift & Company took over the Andalusia plant, and further, that they prefer to buy the Andalusia product through Swift & Company rather than through Mr. Allen.

Examiner Sadler: I think, Mr. Horton, that that would be all cumulative.

Mr. Horton: And that Swift & Company put the pork out in better shape than the old company did. These same witnesses also will testify that Mr. Allen got in a car of the Andalusia pork, and he would sell a little out of the car to such customers as he could, and that he would sell the balance of the car at five or six cents a pound under the western market price. Now, I will further call witnesses who will testify that Mr. Allen frequently had this pork spoil on his hands, and that it was necessary for him to use it for inedible purposes at a very low price a pound.

Examiner Sadler: The hearing will adjourn to Chicago on August 30th, to meet at the Federal Trade Commission offices at 10:00 A. M. If Mr. Horton desires, after taking it up with the Commission, to take further testimony in Birmingham, I expect the Commission will pass on that.

Mr. Horton: Am I going to be given permission to
2000 stay here in Birmingham, and wait until I get a wire from the Commission on this point, Mr. Examiner?

Examiner Sadler: You can take it up with the Commission; it is your privilege to take up anything you wish with the Commission.

Mr. Horton: Do I understand that Your Honor and the attorneys for the Commission are leaving town tonight?

Examiner Sadler: I am going to Washington, yes.

Mr. Horton: Then it would do me no good to take it up with the Commission because I could not hope to get a reply until tomorrow morning some time.

Examiner Sadler: You can take it up with the Commission if you like.

Mr. Horton: But it is agreed that it would not do me any good to do so, because you gentlemen would not be in town here, anyway.

Examiner Sadler: I shall be on my way to Washington, as I said before.

Mr. Taylor: And so say we.

Mr. Horton: All right, we take an exception to your Honor's ruling.

Examiner Sadler: All right. We are adjourned, then.

(Whereupon, at 6:40 o'clock P. M. August 4, 1921, the hearing was adjourned to the offices of the Federal Trade Commission, Chicago, Illinois, at 10:00 o'clock A. M. August 30, 1921.)

2005 Docket 453.

Chicago, September 7, 1921.

Met pursuant to adjournment, 2:00 p. m.

Before:

C. T. Sadler, Examiner.

Appearances:

A. N. Taylor and E. F. Haycraft (Washington, D. C.) for the Federal Trade Commission.

A. H. & Henry Veeder, James M. Sheean, and Frank L. Horton, attorneys for the respondent, represented by Mr. Frank L. Horton.

Examiner Sadler: The hearing will come to order. By mutual consent of the attorneys for the respondent and the Commission the hearing was adjourned from August 30, 1921, at 10 A. M. to September 7, 1921, at 2 P. M.

GEORGE E. PUTNAM was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. State your name, please.
A. George E. Putnam.
Q. Where do you live, Mr. Putnam?

A. 1132 East 46th Street, Chicago.

Q. What is your occupation?

A. I am consulting economist, Swift & Company.

2006 Q. How long have you been so employed?

A. Since June, 1920.

Q. What experience, or what educational qualifications have you for that position?

A. I was engaged in university work for eight years. I graduated from the University of Kansas in 1907. I took a Master of Arts Degree in Yale University, 1908. The next three years I was a student in Oxford University, specializing on economic studies, and I took the degree of Bachelor of Letters there in 1911. Practically during the whole period of eight years I was engaged in the study of economics and economic problems.

Q. That is Oxford University, England?

A. Yes, Oxford University. For the next six years I was Professor of Economics in the University of Kansas. For the three years following that, Professor of Economics in Washington University in St. Louis. During the summer of 1918 I was employed as a special expert of the United States Tariff Commission to investigate the effect of the tariff upon the prices of wheat, oats, barley, and flaxseed. I completed a report for the Commission which has been published in "Tariff Information Series #20." As I have already indicated, since June, 1920, I have been with Swift & Company.

2007 Q. Now, in your position as Consulting Economist for Swift & Company, have you made a study of the livestock and meat industries?

A. Yes sir.

Q. What determines the prices that the packer gets for meat and by-products?

A. That is a rather large question but I shall try to deal with it fully and briefly.

Mr. Taylor: Mr. Examiner, I should like at this time to object to this line of testimony as irrelevant to the issues of this case.

Examiner Sadler: The objection will be noted.

A. Meat is a perishable product. The price of any perishable product is determined by the consumptive demand for the exitsing supply. The only time when it is possible to establish a definite price for a perishable product is when the price fixed has control of the supply. That is impossible in the packing industry because it is impossble for the packer

to control the supply of livestock coming to market. The whole supply has to be directed into consumptive channels and competition establishes a price for perishable products at which the whole supply is consumed. One reason why it is impossible to have the price any higher than the competitive price on perishable products is the fact that consumers will substitute other kinds of food. That is to say, various meat cuts are in competition with one another, and meat
2008 as a commodity is in competition with a great many other food products such as fish, fowl, cheese, and the various kinds of meat substitutes. That process is always going on. At the same time I want to call your attention to the effect which a tremendous increase in the supply of a perishable product like meat will have upon the price. In the Fall of the year the receipts of livestock at the principal markets are pretty heavy, at least relatively heavy, heavier than at any other time of the year. The supply of meat obviously depends upon the number of live animals shipped to market, which means that in the fall of the year there is a big supply of meat which must be consumed. The only way it can be consumed is for the packer to get rid of it. He has to reduce the price to the point where the whole quantity will go into consumptive channels. In the spring and summer when livestock receipts are generally lower the supply of beef is lower and the price that will direct the whole amount into consumptive channels is obviously a little bit higher. By-products, of course, are not so perishable as beef and other kinds of meat, but even in the case of by-products there is an absolute limit to the quantity that any packer can carry. Carrying by-products involves interest charges and carrying charges and there comes a time very quickly in the packing industry where by-products have to be gotten rid of irrespective of the value that was placed upon them
2009 by the time the animals were slaughtered. I think that about answers that question, doesn't it?

By Mr. Horton: Q. What are the economic factors determining livestock prices?

Mr. Taylor: Mr. Examiner, may I have it understood that my objection goes to all this line of testimony, without repeating it as to each question?

Examiner Sadler: Yes.

A. The price of livestock depends upon the prices that the packer can get for meat and by-products combined. I might illustrate that in this fashion. When retailers are

willing to pay higher prices, say, for beef, the packer will try to increase the volume of his business in order to make as large a profit as possible from his operations, but since he can increase the volume of his business only by buying more livestock in the open markets, competition among packers tends to increase the price of the livestock. Likewise, when the retailers are not willing to pay so high a price on account of the falling off, say, in the demands of their consumers, the packer will have to reduce the volume of his business. At any rate, he will not be able to bid at the same rate for livestock as before, and, therefore, livestock prices fall. Now, the public looks at that thing from an entirely different angle. Anybody that is not familiar with the packing industry has a notion that meat and by-product values depend upon livestock prices. It is exactly the reverse. It is on the basis of the prices that the packer can get for livestock products that he goes out and makes bids for livestock.

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By Mr. Horton: Q. What are the principal markets for livestock in the United States?

A. Well, the most important market, of course, is Chicago; it is the largest market and it is the most stable, chiefly on account of its size. Next to Chicago would come such markets as Omaha, Kansas City, and St. Louis. Of a little less importance would be such markets as St. Paul, Sioux City, and St. Joseph. Then of a little less importance still would come Fort Worth, Oklahoma City, Denver, Wichita, Cleveland, Indianapolis, East Buffalo and Milwaukee.

Q. Now, you have told us in a general way how meat and livestock prices are determined, but what really determines livestock and meat prices in a particular section of the country, we will say, in the South?

A. The south is a deficiency section. By that I mean the consumption in the South, especially of pork products is much greater than production in the South. The Department of Agriculture has published figures showing the per capita consumption of meats in various sections of the country for the year 1919. Pork consumption per capita in the south is above 100 pounds during that year. In one section it is as high as 117 pounds,—higher than in any other sections of the United States. Now, in view of those conditions, the South is a deficiency section. It is a good deal like Liverpool as regards wheat consumption. It must buy a great deal from the outside. Now, in practically all communities where a great deal has to be purchased from the

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outside, the price in that community, particularly the price of meat in the South, is going to be higher than the price of meat in the great producing sections of the Middle West; not necessarily higher by more than transportation costs; in some cases it will be, but as a general principle, the price of meat in the South will be higher than the price of meat in Western markets, for the reason that meat has to be shipped in. Now, inasmuch as livestock prices depend upon the prices that can be obtained from meat and by-products, it follows that livestock prices in the South will tend to be higher for the same grade than livestock prices in the West. It is well to keep in mind the fact that where meat is being shipped in from the west to the South, there is going to be a very strong tendency for all of the livestock markets and for all of the meat markets to be kept in line with one another just through such shipments. In other words, the prin-
2012 ciples determining meat and livestock prices in the south are the same principles that I have already indicated for the country as a whole. Prices there must be kept in line through the operation of ordinary enonomic forces.

Q. If meat prices are higher in the South, by what sum or what factor would that exceed the prices in the Western markets?

A. They would tend to exceed them, of course, by the cost of transportation. That would not hold true for every single market, for the same reason that the difference between the Liverpool price and the Chicago price is not always equal exactly to the cost of transportation, but it fluctuates about that point.

Q. By fluctuation you mean sometimes it is a little less and sometimes a little higher?

A. It is bound to be that way. On the whole, the cost of transportation will pretty nearly govern the difference in prices in various markets.

Q. Do I understand by your answer that you mean that the cost of transportation from the producing center to the consuming center is the determining factor in levelling the prices between the two points?

A. In keeping the markets in proper relation to one another, yes.

Q. As the packing industry is now organized and as
2013 it was organized in 1917, can or could any one packer suppress competition in markets such as Birmingham, Atlanta, Jacksonville, Pensacola, or other Southern markets?

Mr. Taylor: Now, Mr. Examiner, I object to that as wholly incompetent, and as well irrelevant and immaterial to the issues in this case. That is the question to be decided by the Commission and the Court in this case, upon the facts. And I object to the question also, that it does not purport to attempt to include all of the facts upon which any such opinion might be based.

Examiner Sadler: The objection will be noted.

A. It would be possible for one packer to withdraw from a particular market in the South and thereby lessen the number of competitors in that market; but even so, the withdrawal of one packer could have no substantial effect upon meat prices or livestock prices because those prices are going to be in line with prices in the producing sections. If one of the packers who remained in that market tried to get more for his meat than his meat was worth, the meat would spoil on his hands, for one of two reasons. In the first place, the meat is perishable, and if he was trying to get more for his meat than it was worth, people would substitute other kinds of food; or, under the same conditions, if he was trying to get too much for his meat, the packer who withdrew would come back, or some outside packer would ship 2014 meat products into that market and restore prices to their former level. Under the operation of all economic laws that we know anything about, it would be impossible for a packer to lessen competition in one of those southern markets substantially, or for two or three packers to lessen competition substantially in those markets. If the packers were dealing with a product that was not perishable, the situation might be substantially different. Those are the two fundamental factors, by the way, in the meat business,—perishability of the product, and, in the second place, the fact that the packers all have, or most of the large packers have distributive facilities which enable them to take meats from sections where livestock are produced and put them very quickly into deficiency sections where high prices exist. Operations of that kind, of course, tend to bring prices in line the country over; they make it virtually impossible to lessen competition in any one market.

By Mr. Horton: Q. What is the economic function of the packer with regard to distribution of meat and meat products?

Mr. Taylor: That is objected to as immaterial.

Examiner Sadler: The objection will be noted.

A. The main economic reason for the existence of the large packer grows out of the fact that two-thirds of the livestock in the United States are produced west of the
2015 Mississippi River, and two-thirds of the population of the country lives to the east of the Mississippi. Under those conditions, either live animals, or fresh meats must be shipped from the West to the East and from the West to the South; and it has been found to be much more economical to slaughter the animals in the producing sections and ship the fresh meats under refrigeration to the consuming sections than it is to ship the live animals. In the earlier days, of course, cattle were shipped on the hoof from the West to the East, where they were slaughtered for local consumption. That method of distribution was exceedingly wasteful, and it was only upon the advent of the refrigerator car that it was possible to overcome those wastes. I might say in that connection that it is on account of the distributing service of the large packer, namely, his refrigerator cars and his branch house equipment that virtually divides the packing establishments into two classes; first, those who have this service, and, second, those who haven't it. It is for that reason that the operations of the large packers with nation-wide, or with a great deal of equipment for meat distribution make him not comparable at all with a packer not having that equipment. They perform two entirely different functions. The business of some packers is entirely local; they sell their products practically in the markets where they buy the raw materials. Large packers having refrigerating and dis-
2016 tributing equipment depend almost entirely upon their long distance service rather than upon the local business.

By Mr. Horton: Q. What function does the packer with long distance distributing facilities perform in the South?

Mr. Taylor: I object to that as incompetent, irrelevant and immaterial.

Examiner Sadler: The objection will be noted.

A. As I have already indicated, the South is a deficiency section; and it is the function of the large packer to ship meat products under refrigeration from surplus producing sections to a deficiency section. A large packer therefore ships meat products into the South where his products compete with the products of local concerns, and it is through the operations of the large packers and the small packers that prices are established in southern cities on meats and on livestock, in line with prices in the West and North. I

should point out also that the large packer in many cases has established plants in the South to help take care of the livestock which is produced locally, and that the South is dependent not only upon the meat produced from their own livestock but also upon the meat shipped in by the large packers.

2017 By Mr. Horton: Q. What would be the economic motive for a packer to establish a plant in the South?

Mr. Taylor: I object to that, for the same reason assigned to the last question.

Examiner Sadler: The objection will be noted.

A. There are no large livestock markets in the South comparable to the markets in the Middle West and North. It would be therefore necessary for a Southern livestock producer to ship his livestock, say, to St. Louis or Indianapolis. The larger the market the better the opportunity he will have for getting full market value. That means that the price of livestock in the South would normally be lower than the price of livestock in the West. It means also that when he shipped his livestock to Western markets he would have to have the meat shipped back to him. Therefore, meat prices in the South tend to be higher and are higher than meat prices in the West, while livestock prices are lower. Therefore, it is possible—it is advantageous, in fact, for a large packer to produce meat and by-products in the South, and take advantage of the widespread between live stock and meat prices, if the supply of raw materal in the South is sufficiently large and appears to be prospective. In that connection also it is worth noting the economic effect of the operations of a large packer. By going into the South and buying cattle he actually raises the price of live cattle

2018 for the Southern producer; and by producing meat he actually reduces the price of meat for the southern consumer; that is to say, he establishes a plant in the South when the spread between the livestock and meat prices is wide, and his operations tend to reduce the spread and do actually reduce the spread between livestock and meat prices. Of course, no packer would undertake to engage in the production of meat and by-products in the South unless he thought that he had a good supply of raw material or that the supply of raw material in the form of cattle, hogs, sheep, and so forth was going to be sufficient for a great many years and probably grow at a good rate from year to

year. The packer has to look out for a supply of raw materials.

By Mr. Horton: Q. The illustration you have just used was with regard to cattle. Would the same reasoning apply to hogs also?

A. Yes; I used cattle merely as typical of livestock in that respect.

Q. Now, will you please summarize your reasons as to whether it would be impossible for any packer or group of packers to control meat and livestock prices in the South?

Mr. Taylor: I wish to make the same objection, Mr. Examiner.

Examiner Sadler: The objection will be noted.

A. I would say there are two fundamental reasons
2019 why such control would be impossible. The first reason is that meat is a perishable product which is in competition with other kinds of food. People will take to consumption of meat substitutes very quickly if the price goes up sufficiently high, and there are some, of course, who will take to the consumption of meat substitutes if the price goes up five cents a pound on meat. Right in that connection, I indicated once before that the price of a perishable product will be fixed, by competitive conditions, at the point where the whole supply will be moved into channels of consumption; and that the only case where it is possible to control the price of a perishable product is where the seller of that product also controls the production and the supply of it. That is impossible in the case of the packers because they are not engaged in the production of livestock; they have no control over livestock receipts, nor over livestock production. On the contrary, the packers have to take the supply of raw material as it comes to them, and they virtually have to clean up the market and pay cash the day they make a purchase. The second fundamental reason why price control is impossible is that Southern livestock and meat prices must be in line with prices in the North and the West. If any packer would try to sell his meat in the South for more than it was worth, it would spoil on his hands, because people would take to other kinds of food, or meat products
2020 would be shipped in by some competing packer, who would get the business. One other point in that connection, by way of summary, is the fact that livestock prices are dependent upon meat and by-product values, and the relation is not the reverse, as a great many people think. The

cost of a beef carcass has practically nothing to do with the price that the packer realizes for the carcass. Perishable products cannot be sold on the basis of costs successfully. Perishable products have to be sold for what can be gotten for them. The packer, in short, gets all he possibly can for his meat products, and on the basis of what he gets for those products he goes out and makes bids for live animals, with the result that when meat and by-product values rise the price of livestock rises; when meat and by-products fall, the price of livestock falls. I guess that summarizes it.

By Mr. Horton: Q. What can you say as to the speculative risk assumed by the packer?

Mr. Taylor: I object to that, for the same reasons.

Examiner Sadler: The objection will be noted.

A. The speculative risk is very heavy, for the reason that the margin between buying and selling prices is very small in the packing industry, after taking into account the expenses of operation. During the year 1920, for instance,

Swift & Company, or, the buyers of Swift & Company 2021 were trying to keep in mind their by-product values and beef prices in making bids for live cattle. By-products, however, have to be held some time before they can be marketed; where beef has to be marketed within about fourteen days after the time it is slaughtered, a hide, which is the principal by-product of a steer, cannot be cured in less than thirty days; it has to lie in a cured state for thirty days before it is fully cured. Oleo Oil cannot be prepared for the market, or, as a matter of fact it cannot be prepared as Oleo Oil for about two weeks after the animals are killed. Now, that means that the by-products are in the packer's hands, as they have to be, and their value may change considerably. As a matter of fact, during the year 1920 there was a steady fall in the value of by-products from April to the end of the year. A tremendous fall. By-products from a 1,000 pound steer were worth about $28.00 at the beginning of the year, and at the end of the year by-products from the same steer would be worth about $7.00. The packer had to take a loss on his total cattle operations for the year on account of the fall in by-product values. If they had fallen all at once it would have been very different. They could have, or at least they would have attempted to buy live cattle on the basis of those low values. As it was, they did the best they could and most of the packers showed

losses, substantial losses on their cattle operations.
2022 Now, that is only an illustration of the speculative risk that is involved. The risk on beef is pretty large in itself; the risk on by-products is even greater. It occurs to me now that by-product values were falling during the whole year, rather than from April on. I had in mind the chart which was for a two-year period, rather than for the period of 1920. I have here, by the way, a chart showing the fall in those by-product values, but I don't suppose there is any way of putting it in the record. In any community of the country the demand for meat may change over night, on account of changes in the weather; weather is one of the big factors with which the packer has to contend. He cannot anticipate quick weather changes, and if he has a large supply of beef down in New York and a good warm spell comes along, people reduce their consumption of beef, and he simply has to unload it there way below cost. Not only is that true with regard to beef, but it is true with regard to particular cuts. It is impossible for one packer to know what the demand in New Hampshire will be for a particular kind of meat. He has to make the shipment and assume the risk and do the best he can. Another big factor which has been very prominent among the speculative features of the business is the effect which industrial conditions have upon demands in various sections of the country. The demand for meat fell off very considerably in the New England
2023 States when the present industrial depression set in; it fell off there before it fell off in any other part of the country, because New England is mostly industrial and the unemployment problem became more severe there at an earlier date than in any other section. In general, owing to the very small spread between the packers' buying prices and selling prices, after taking into account his expenses of operation, the packing business is a very risky business. A very small error of judgment makes all the difference between a profit and loss.

By Mr. Horton: Q. What was Swift & Company's average profit per dollar of sale for the past ten years?

Mr. Taylor: Now, Mr. Examiner, I object to this as wholly incompetent. It is not the kind of evidence to prove a fact of this sort by. This witness is testifying here as to opinion evidence almost entirely; and by the widest stretch of the imagination, opinion evidence cannot be received as probative of figures of this sort. The evidence is wholly incompetent to prove figures.

Examiner Sadler: The objection will be sustained.

By Mr. Horton: Q. What was Swift & Company's average profit per pound of perishable products handled for the past ten years?

Mr. Taylor: I object to this question on the same ground upon which I objected to the last question.

2024 Examiner Sadler: The objection will be sustained.

By Mr. Horton: Q. I will ask you if you know the answer to those two questions, Mr. Putnam?

A. Yes, sir.

Q. You do. And have you had access to the figures?

A. Yes, sir.

Q. And you have computed that?

A. Yes sir.

Q. Now I will ask you to testify again from your own knowledge as to what is Swift & Company's average profit per dollar of sales for the past ten years?

A. 2.2 cents on the dollar of sales.

Mr. Taylor: I renew my objection, Mr. Examiner. I move to strike out the answer which was made while I was formulating my objection.

Examiner Sadler: The objection will be sustained.

Mr. Taylor: And I move to strike out the answer which was made, which I think was taken by the Reporter; I am not certain.

Examiner Sadler: The motion to strike will be sustained.

Mr. Horton: I call your attention, Mr. Examiner, to the fact that I am asking this witness to testify as to facts which are purely within his own knowledge. The answer to

2025 that question is a fact and the witness has replied that he has knowledge of that fact.

Mr. Taylor: Mr. Examiner, the answer called for from the witness is not a fact, but a conclusion, which is based upon hundreds of other facts, none of which are before us here. It is a conclusion which the Commission and the Court would be entitled to form for itself, if it were relevant to this case, which it is not, and it is a conclusion which can only be arrived at after the Court and the Commission has before it the hundreds of facts upon which it is necessarily based.

By Mr. Horton: Q. Mr. Putnam, in your work with Swift & Company, have you made a particular study and have you not had occasion to refer to records and to the reports

of that company which show what the average profit per dollar of sales was from year to year?

A. Yes, sir.

Q. And in that same connection have you not had occasion to ascertain in the usual and ordinary course of your employment as to what was the average profit per pound of products handled year by year?

A. Yes sir.

Q. And you know of your own knowledge what those figures are?

A. Yes sir.

2026 Q. And you have gained this knowledge through your contact with the business and the course of your studies?

A. Yes sir.

Q. And in the course of your daily employment?

A. Yes sir.

Mr. Horton: Now, Mr. Examiner, I again repeat these questions:

By Examiner Sadler: Q. That is, you formed your own conclusions as to the amount of profit made?

A. I have seen the figures.

Mr. Taylor: I renew my objections to this question, Mr. Examiner. It is very evident that this witness does not have in mind all of these figures. If he did have in mind all of these figures it would be improper for him to express them. They would not be the best evidence. And if this question were relevant to the issues here then the proper way to prove it would be to prove the figures upon which the conclusion must be based.

Examiner Sadler: If you want to put that in evidence I think you should have the facts and figures before us.

Mr. Horton: The witness is testifying to the facts which he has stated that he had knowledge of. The said knowledge is gained in the course of his usual and ordinary employment.

2027 Examiner Sadler: I know the witness may have seen the figures and facts, but the Court and Commission haven't them before them.

Mr. Horton: We are trying to give the Court and Commission the facts through this witness; the Court and Commission will not know anything about it unless this witness or some other witness testifies to it; and that is the ultimate fact to be proven by this witness; that is what we offer now.

Mr. Taylor: Mr. Examiner, this witness has been shown certain figures and he has accepted those figures, and upon the basis of that acceptance I assume he has made certain computations, although it is not testified; it is assumed that he is competent, and now it is attempted to get on the record here the result of his conclusions from certain figures which have been shown him, and which have not been proven and not admitted in this record. It is wholly objectionable, wholly incompetent.

Mr. Horton: Counsel is only assuming those facts, your Honor, and you should not be guided by his presumptions and assumptions, but rather by the facts testified to by this witness. He has gained this knowledge in the usual course of his business.

Examiner Sadler: Let it go in for what it is worth, subject to the objection.

2028 By Mr. Horton: Q. Now, I will ask you, Mr. Putnam, what is Swift & Company's average profit per dollar of sales for the past ten years?

Mr. Taylor: I object on the grounds heretofore enumerated; it is not competent evidence; it is not shown in this record by competent evidence the figures, facts, and circumstances from which any such conclusion could be based, and therefore the answer now sought to be elicited is wholly incompetent and improper and of no value whatever, as well as incompetent.

Examiner Sadler: Let the witness answer, subject to the objection. I think it would also shorten up the record. If the Commission decides to sustain your objection, they can easily strike it out.

A. Swift & Company's average rate of profit per dollar of sales for the past ten years has been 2.2 cents.

By Mr. Horton: Q. And what was Swift & Company's average profit per pound of perishable products handled for the past ten years?

Mr. Taylor: I also object to that, Mr. Examiner, as incompetent, as well as irrelevant.

Examiner Sadler: The objection will be noted.

A. 28/100 of a cent per pound.

By Mr. Horton: Q. What determines the price of commercial cuts of pork?

Mr. Taylor: I object to that, Mr. Examiner, as both

2029 irrelevant and incompetent.

Examiner Sadler: The objection will be noted.

A. The principal cuts from a hog would consist of ham, shoulder, pork loin, and the fats that go to make lard. These products are entirely separate and distinct from one another. After they get on the market each one is perishable and subject to the economic law governing the prices of perishable products. I might say also that there are a great many cases and a great many times when the price of pork loins or the price of ham will be rising while the price of hogs is falling, or vice versa; they have no relation as individual products to the price of the hogs, but it is on the basis of the prices of all these commercial cuts taken together that the packer goes out and makes bids for live hogs, with the result that hogs rise in price when the value of the products derived from a hog are rising in price, and a hog falls in price when the products derived from a hog, that is, all of the products derived from a hog, are falling in price. I have known cases again where a pound of ham was the equivalent in the market of two and a half pounds of lard, then within a couple of weeks a pound of ham would be equivalent only to two pounds of lard. That is to say, one of these products may rise in price while the other is falling, according to demands in various sections of the country, which are affected
2030 of course by changes in weather conditions. During the past summer—here is a good illustration of the point I am trying to make—dried beef became very high in price. I takes about 300 days to prepare dried beef, and the summer was unusually hot, with the result that a great many people took their meals out of doors, picnicing, and no doubt consumed large quantities of such products as dried beef. The packer could not get those products on to the market fast enough; he certainly could not turn them out within the course of that summer; and the price naturally rose. So, in various sections of the country you may find at any one time a big demand for hams; in other section of the country you may find a big demand for pork loins. It is even possible for those two things to be rising in price when at the same time the receipt of hogs in Chicago and in the other markets would be so large that the price of live hogs might be falling, because the price of live hogs depends upon the price of all cuts from a hog rather than upon the price of any one of them. Each cut from a hog is a commodity in itself, subject to the law determining the prices of perishable products.

By Mr. Horton: Q. Now state whether or not each particular cut from a hog, or commercial cuts, as they are

termed, is in competition with all other cuts and with all other kinds of meat and meat substitutes?

2031 Mr. Taylor: I object to that, Mr. Examiner, as incompetent, irrelevant to the issues in this case.

Examiner Sadler: The objection will be noted.

A. Any one pork cut is in competition with all other pork cuts, even with all other kinds of meat and meat substitutes such as fish, fowl, and cheese, and practically at all times.

Mr. Taylor: I withdraw my objection to this last question.

By Mr. Horton: Q. How about eggs, cheese, and other meat substitutes?

Mr. Taylor: I object to that, Mr. Examiner.

Examiner Sadler: The objection will be noted.

A. They are also highly competitive products.

Mr. Horton: You may take the witness.

Cross-Examination by Mr. Taylor.

Q. Mr. Putnam, as I recall your testimony, the local packer in the South is in a position to offer to the public the products of his packing house at a very considerably less price than the Western packer, with regard to the same products; that is correct, is it?

A. You say he is prepared to offer at a lower price?

Q. He is able to?

A. Well, he gets all he can; he gets all he is able to get.

Q. But he is able to sell his products very much

2032 lower than the Western packer in the South?

A. Not if they are the same products, no.

Q. By the same products I mean the same cuts of pork?

A. If they are the same, that is true.

Q. The packer with a packing house in Georgia can sell pork loins at a very considerable less price than the Western packer can sell pork loins in Georgia?

A. Not to my knowledge. I don't believe that cuts of pork are exactly comparable.

Q. Did you not testify that the western packer must pay the western prices for his hogs and must pay the transportation from the west to Georgia?

A. Certainly.

Q. And that it is necessary for him to get more money for his products when he gets them there?

A. The only reason he ships is because he can get more money.

Q. Please answer the question. Was not that what you testified?

A. I testified that the high transportation cost was not the cause of the high prices, but that the high price down there was the cause of the transportation. There is a distinction there.

Q. And the local packer, slaughtering the local hogs, does not have to pay that high transportation cost?

2033 A. No.

Q. On either his livestock or on the finished product?

A. No.

Q. Therefore he can sell it for much less than the Western packer can sell the same product in that market?

A. If he wanted to, I suppose, he could, certainly.

Q. Yes. That is the way I understood your testimony. I wanted to be sure I understood it correctly. Now, then, with regard to competition, if this local packer slaughtering and selling his local products at a less price, if the stock of his concern is bought by a Western packer, who takes over the marketing of that same product, marketing it through his branch houses in the South, doesn't that eliminate competition between this particular Western buyer who has bought the stock of the Southern packer and the Southern packer whose stock is so bought?

A. I don't see there is any question about it. It undoubtedly would.

Mr. Taylor: That is all.

Redirect Examination by Mr. Horton.

Q. Mr. Putnam, I will ask you if it is not a fact that, according to economic laws and according to the way business is conducted the world over, if any packer, Northern or Southern is not trying to sell his meat for all he can get

2034 for it?

A. Absolutely.

Mr. Taylor: I object to that, Mr. Examiner. Might as well ask him what human nature is.

Examiner Sadler: The objection will be noted.

By Mr. Horton: Q. As I understand your testimony, the Southern Packer, or the Northern packer—better say for this

question that it is the Southern packer—is trying to sell his meat for all he can get for it?

A. Yes sir.

Q. And what he realizes for it will depend upon what he can bid for the raw material?

A. What he realizes on it virtually determines the amount he can bid for the live animals.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

(Witness Excused).

F. A. HUNTER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. State your name, please?

A. F. A. Hunter.

Q. Where do you live, Mr. Hunter?

2035 A. I live in St. Louis, Missouri.

Q. What is your business?

A. I am General Manager of Swift & Company at National Stock Yards, Illinois.

Q. That is National Stock Yards just outside of East St. Louis?

A. Yes.

Q. And how long have you been manager of that plant of Swift & Company?

A. For thirteen years.

Q. And how long have you been in the packing business?

A. Twenty-four years.

Q. Did you have anything to do with the purchase of the Andalusia Packing Plant of the Andalusia Packing Company, and the Moultrie Plant of the Moultrie Packing Company, when those plants were purchased by Swift & Company?

Mr. Taylor: Just a moment. Do you refer to the purchase of the stock, Mr. Horton?

Mr. Horton: Let the witness answer in his own way.

Mr. Taylor: Yes, but there were two separate transactions. I think it ought to appear what the witness is testifying to. The stock of each was bought by Swift & Company, and subsequently the properties of each corporation were conveyed to Swift & Company.

By Mr. Horton: Q. How do you understand the question, Mr. Hunter?

2036 A. You asked if I had anything to do with the purchase of either of those properties?

Q. Yes.

A. I did.

Q. Now explain your connection with that purchase from the beginning?

Mr. Taylor: Well, now I will ask again what you mean by that purchase?

Mr. Horton: I am referring to the purchase of the stock, Mr. Taylor, and the witness understands that, and I think you understand it.

Mr. Taylor: I don't think it appears clearly on the record.

Mr. Horton: We will make it clear, to save all arguments, that I am referring to the purchase of the stock.

Mr. Taylor: Thank you.

A. I made, I think, three trips to the south, investigating the development of the livestock industry in the South. Those trips were about a year apart. The first one, I think, was in about 1915, and the second in 1916, and the third in 1917.

By Mr. Horton: Q. Now, what conclusion did you come to after your 1915 trip?

A. I felt that the production of livestock was not sufficiently great to warrant a packing plant in the South.

2037 Q. That was the purpose of your trip, was it, to determine whether or not there was enough livestock down there—

A. Yes.

Q. To do what?

A. To support a plant.

Q. Swift & Company were contemplating building a plant down there, was that the idea?

Mr. Taylor: I object to the form of the question, Mr. Examiner.

Examiner Sadler: The objection will be noted.

By Mr. Horton: Q. Well, what was the idea, Mr. Hunter?

A. The idea was to keep in touch with the development of the South in livestock, and if there was sufficient livestock I was to report it with a view to building something in the South, to get into the business down there.

Q. And what was the conclusion you reached after your 1915 trip?

A. That there was not sufficient livestock to warrant a plant.

Q. And what was the conclusion reached after your 1916 trip?

A. The same.

Q. Then what was the conclusion reached after your 1917 trip?

A. Well, during this period the boll-weevil had infested the section south of the river, and a great many farm-
2038 ers on the advice of, I think, the Department of Agriculture and others had gone into livestock raising, with a view of providing some sort of a "money-crop" as they term it down there, to take the place of cotton; and I understand that by not planting cotton for a season or two it was reasoned that the boll-weevil would become extinct in those sections. I think a great many farmers took that advice and went into livestock raising on a little broader scale. With that tendency I was somewhat in doubt even then as to whether there was sufficient livestock to support a plant, and we had some talk of it in the Chicago office, and Mr. Swift came down South to meet me down there and we went into the matter more carefully on the ground, and it still looked as if it was rather a doubtful matter. I might say that geographically and from a transportation viewpoint we rather favored Montgomery, Alabama as the most likely promising place for a plant, but Mr. Swift came there and we were a little afraid of it.

Mr. Taylor: Now, Mr. Examiner, up to the point where the witness said he was somewhat in doubt as to whether there was sufficient livestock to justify building a plant, I move to strike out the answer as not responsive, up to that point, but not after.

Examiner Sadler: The motion to strike will be noted.

By Mr. Horton: Q. Now, who was with you down
2039 there, Mr. Hunter, down South, at the time you refer to?

A. Mr. Carr.

Q. And when was it?

A. It was early in 1917; maybe the spring of 1917, somewhere around there.

Q. Did you and Mr. Carr survey the Southern field at that time?

A. Well, yes; not so completely as I had previously, but we were at a few points.

Q. And what conclusion did you reach at that time with reference to building a plant?

A. That we not build.

Q. I will ask you if when Mr. Swift came down and went into the matter further, whether or not you decided to build one at Montgomery at that time?

A. We decided that we would not.

Q. And then what took place?

Mr. Taylor: Mr. Examiner, I wish to object to all this as irrelevant to the issues.

Examiner Sadler: The objection will be noted.

A. We decided, or, rather, talked of what would be the next best thing to do. What really developed was this, that the South should be offered a stabilized market for their products. A great many people that I interviewed said "What is the use to raise this livestock? We haven't
2040 any place to put it." And we figured if we could get in there on a reasonable investment, that we might work with the stock interests of the South toward developing a better class of livestock, and at the same time to furnish them an outlet that they could depend upon. They wanted some assurance that there would be a market if they got out of cotton and got into the livestock.

By Mr. Horton: Q. Now, did you have a talk with Mr. Swift before you went down there each time; you went under his instructions?

A. Yes, I went under his instructions, yes sir.

Q. Referring to 1917, what was the general situation in regard to the packing industry at that time?

A. That was right during the war period and we naturally were trying to produce everything we could for war purposes, and were very much interested in developing a broader production of livestock.

Q. And I will ask whether you—and by "you" I mean Swift & Company—were not urged to do that by the United States Food Administration?

Mr. Taylor: I object to that.

Examiner Sadler: The objection will be noted.

A. We were.

By Mr. Horton: Q. Now I will ask you whether or
2041 not it is a fact that you and Mr. Carr selected as a logical place for a packing plant—or, selected Montgomery, Alabama, as being the logical place for a packing plant if one was to be established in that section?

A. We did.

Q. Now, did you have a conversation with Mr. Swift down there prior to the time you bought the Moultrie plant and the Andalusia plant?

A. Yes sir.

Q. And he was there in person and met you folks?

A. Yes sir.

Q. And whether or not you and he had any conversation with regard to building a plant at Montgomery?

A. We did.

Q. And what was that conversation?

A. It was to the effect that there was not enough livestock to support another plant, and Mr. Swift said that he didn't want to get into any position of building a plan and taking away the volume from others, that there would not be enough for anybody. In other words he felt the best way out of it—

Mr. Taylor: Now, Mr. Examiner, I object to what Mr. Swift thought, and I also object to these conversations.

By Mr. Horton: Q. Go ahead, Mr. Hunter. Please give the substance of the conversation; give the exact words 2042 if you can remember them; if you can't, give the substance.

A. Our final conclusion was that we had better buy something that was there, instead of building.

Q. And why?

Mr. Taylor: Now, I object, first, to the conclusion; second, on the ground on which the conclusion is reached. It is incompetent, and irrelevant to the issues in this case. What difference does it make, Mr. Examiner, why this respondent bought the stock of a competitor and eliminated the competition?

Examiner Sadler: The objection will be noted.

A. Well, we wanted everybody to feel all right about the matter; and we thought if an extra plant were built there it would reduce the available volume for each plant to such an extent that it would not be profitable for anybody.

By Mr. Horton: Q. Did Mr. Swift say anything to you about that?

A. He did.

Q. What did he say?

Mr. Taylor: That is objected to.

A. He said that he didn't want to do anything that would interfere with any established business.

By Mr. Horton: Q. And what established business did you have in mind?

A. Those plants that were operating there in differ-
2043 ent States.

Q. Then what did you decide to do?

Mr. Taylor: I object to this also as wholly irrelevant and incompetent. It has been shown in this record over and over again what they did.

Examiner Sadler: The objection will be noted.

A. We decided to see what we could do toward buying what was there.

By Mr. Horton: Q. Now, you and Mr. Swift talked this entire thing over, and did you have the handling of it with him?

A. Yes sir.

Q. Now, why did Swift & Company buy the capital stock of these two companies, that is, the Moultrie and the Andalusia?

Mr. Taylor: I object to this, Mr. Examiner, as wholly irrelevant and also as incompetent.

Examiner Sadler: The objection will be noted.

A. We wanted the proposition in such shape that each stockholder would get the same amount and we made the proposition if they could get their stockholders together and agree to a certain amount that they all would realize the same and be satisfied.

By Mr. Horton: Q. Did you ever hear of anybody being dissatisfied with it?

Mr. Taylor: That is objected to as immaterial.

2044 Examiner Sadler: The objection will be noted.

A. I did not.

By Mr. Horton: Q. Did you and Mr. Swift, or anybody in connection with the company know anything about Section 7 of the Clayton Act at that time?

Mr. Taylor: That is also objected to.

Examiner Sadler: The objection will be noted.

A. I did not.

By Mr. Horton: Q. Was that mentioned in any way?

A. It was not.

Q. Do you feel that it would have been mentioned had anybody known about it at that time?

A. Sure it would.

Mr. Taylor: Mr. Examiner, I would like to ask if counsel intends to contend seriously here that ignorance on the part

of Mr. Hunter of Section 7 of the Clayton Law is a defense to this case.

By Mr. Horton: Q. Do you know Mr. Vereen, who was president of the Moultrie Packing Company?

A. I do.

Q. Did you ever meet him?

A. I did.

2045 Q. Where?

A. I met him at Moultrie and I met him at Atlanta, Georgia.

Q. Referring to the meeting at Atlanta, was that before you had conducted any negotiations with him for the purchase of the plant?

A. Yes, it was three or four months before.

Q. And did you have a conversation with him at that time?

A. Yes.

Q. And what did he say, if anything, with regard to selling his plant, or otherwise?

A. Well, he said that his health was a little bad and he was very busy on other matters and that he would like to be relieved of the active management of the Moultrie business, but that he had been required to give his personal endorsement to so much of the paper of the Moultrie Packing Company that he felt that he must give attention to it to protect that endorsement, and that it had grown into a much greater obligation than he had ever thought at the time he subscribed for the amount of stock that he subscribed, and that if he could sell at a reasonable figure he would like to do it.

Q. And was that before you had any negotiations with him regarding the purchase of the plant?

A. Yes, sir.

Mr. Taylor: Now, I object to this and move to strike out all this conversation with Mr. Vereen as wholly irrele-
2046 vant to the issues in this case, and wholly incompetent. Furthermore, it is cumulative.

Examiner Sadler: The objection and motion to strike will be noted.

Mr. Horton: Take the witness.

Cross-Examination by Mr. Taylor.

Q. Mr. Hunter, did I understand you correctly that when you made this first trip in 1915, you came to the conclusion

that there were not sufficient number of hogs being raised in Georgia and Alabama to support a packing plant?

A. I did.

Q. Not enough being raised to support a single plant?

A. That is the way I felt about it, yes.

Q. And in 1916 you were still of the same opinion?

A. I was.

Q. Now when you went down there in 1917 did you recommend the purchase of both the Andalusia and the Moultrie plants?

A. Not at that time, no.

Q. Did you ever recommend the purchase of those two plants?

A. I recommended the purchase of the Moultrie plant at that time.

Q. When was this?

A. Early in 1917, at this visit I speak of.

Mr. Taylor: That is all.

2047 Examiner Sadler: Any re-direct?

Redirect Examination by Mr. Horton.

Q. What was the motive that actuated you to interest you in that section of the country? By "You" I mean Swift & Company.

Mr. Taylor: I object to that.

By Mr. Horton: Q. (Continuing): So far as facts have come to your knowledge?

Mr. Taylor: I object to that as wholly immaterial and also as incompetent.

Examiner Sadler: The objection will be noted.

A. By hearing so much of the South turning their attention to live stock raising.

By Mr. Horton: Q. And can you develop that idea just a little more fully, please?

A. Through the press, and the Chamber of Commerce of various sections of the South were almost continuously sending us literature referring to the great development in the South and asking us to look into it and really provide a market.

Q. Now, you speak of development in the South. What development do you have reference to?

A. Development of the livestock in the South.

Q. And by that do you mean the raising of more livestock?

A. The raising of more livestock. The cotton acre-
2048 age was being abandoned on account of the boll weevil and the South was in pretty bad shape on that account, and quite a propaganda was started locally and from Washington to make them more nearly self-supporting on their food products. They have had advice from the Agricultural Department to grow less cotton and more food, and that was the slogan of most all the Chambers of Commerce throughout the South. The matter was brought to our attention from that source.

Q. And why would it be advantageous to you to have a packing plant in the South?

A. Well, of course, we want to expand in business and it is of course economically proper to provide slaughtering facilities as near the source of livestock production as is practicable. That has been the history of all livestock development, that when it does develop in sufficient numbers to warrant a packing plant, a packing plant usually locates rather convenient to the source. There was a time when Chicago was about the farthest packing house West, and as the country developed they went to the Missouri River, and as it further developed they went on west to such points as Wichita, Denver, Ogden, and such as that. That has been the history of development of livestock, that the packing centers followed closely the origin of the livestock.

Q. Then after the packing house is established, does that aid in the further development?

2049 A. There is no doubt about it.

Q. Well, are we to infer from your testimony then that you consider the South was in the same position in 1917 that Chicago was in the early part of the agricultural development on this country?

Mr. Taylor: I object to the form of the question, Mr. Examiner.

Examiner Sadler: The objection will be noted. I will ask the attorney for the Respondent not to lead the witness.

By Mr. Horton: Q. I wish you would develop that idea a little further, please, Mr. Hunter?

A. Any agricultural product must have a stabilized market that is reasonably near, in order that transportation charges won't entirely cut the net returns to the producer. It is equally true in grain. The grain markets have grown

just as the livestock markets have grown. You ship livestock long distances, and the mortality through long trips on the road is high, and in addition to that the shrinkage of the live animal is very great; it not only shrinks in weight but shrinks in quality; and it is decidedly to the advantage of the producer to have a market as near at hand as possible. Now, in order to make development profitable we have to have a market, and you can have a market just as soon as development reaches a point that it will sustain, in our
2050 case, a packing house. We felt that the South had reached that point, and it was our duty, really, to lend this assistance to them, especially in view of the fact that the Government was clamoring for greater production. Does that seem to answer the question?

Q. Now, when did you consider the time had arrived—

Mr. Taylor: Now, Mr. Examiner, I wish to object just at this stage to this question that is being formulated by counsel, as very apparently leading.

By Mr. Horton: Q. When did you consider the time had arrived when the South would support a packing house?

Examiner Sadler: The objection will be noted.

The Witness: Will you read that question, please?

(Question read as above recorded.)

By Mr. Horton: Q. (Continuing): I mean, what year do you fix as the time when that was reached?

A. 1917.

Q. And just what do you mean by a packing house, Mr. Hunter? What is your conception of a packing house, considered in this respect?

A. A packing house, as I conceive one, is one that can be built large enough to provide proper facilities for slaughtering and refrigerating, and taking care of the numerous
2051 by-products from the animals. About the distinction between packing house and a slaughter house is that a packing house has facilities that are sufficiently sanitary to get the approval of the Department of Agriculture, and with that approval you may have inspection that will allow you to ship products into States. And it must also be provided with facilities for utilizing the various by-products which a smaller plant does not and cannot have. There must be a real volume of livestock to make it worth while or profitable to recover the by-products.

Q. And whether or not that volume must be constant all the year around?

A. It had to be fairly, constant and come in fairly even flow, to make the operation profitable, keep the expenses within reason.

Mr. Horton: That is all.

Recross Examination by Mr. Taylor.

Q. Mr. Hunter, Swift & Company has a branch house at Atlanta, has it not?

A. A branch house?

Q. Yes.

A. Yes, sir.

Q. Had it there for a number of years?

A. Yes, sir.

2052 Q. About how long?

A. Well, twenty years, to my knowledge.

Q. It has a branch house over at Birmingham, hasn't it?

A. Yes sir.

Q. Had it there for a number of years?

A. Yes sir.

Q. About how long?

A. Well, twenty years that I know of.

Q. It has a branch house at Pensacola, hasn't it?

A. Yes sir.

Q. And how long has that branch house been there?

A. Well, fifteen or twenty years.

Q. It has a branch house at Jacksonville, Florida, hasn't it?

A. Yes, sir.

Q. And how long has that branch house been there?

A. Twenty years that I know of.

Q. Now then these branch houses have all been selling pork products from the West, have they not, during all this period?

A. They have.

Q. And beginning along about 1915 and culminating about 1917 they found that there was a great amount of this Southern pork being sold in their respective markets, did they not?

A. I wouldn't say a great amount, no.

Q. Well, there was this Southern pork being sold?

A. Some, yes.

2053 Q. And it was being sold in increased quantities, wasn't it?

A. It was.

Q. And you found it was being sold for less than you were selling your Western pork?

A. I don't know that is true.

Q. It was being sold at the same price you sold your Western pork?

A. I don't know about the price.

Q. You don't know?

A. No.

Q. And in the course of your investigation in these Southern States, did you not ascertain at what price this southern pork was being sold?

A. No, I did not.

Q. Didn't look into that at all?

A. I did not.

Q. So far as you know now it was bringing the same price as the western pork was right there?

A. I made no investigation of that at all.

Q. So far as you know now it was bringing the same price as the western pork was in that market?

A. I don't know about the price. I made no investigation as to the price.

Q. To the best of your knowledge it may have been
2054 bringing the same price right then that the western pork was?

A. It may have been bringing a premium; I don't know anything about the price.

Q. Now, as a matter of fact, weren't your branch houses buying and selling this same pork, this same southern pork, from these southern packing houses?

A. Well, I really don't know; it is likely they were, in small quantities.

Q. Now, before you bought this stock of these packing houses, didn't you make tests, killing tests of the local hogs and the local cattle?

A. No.

Q. Made no tests at all?

A. I didn't.

Q. You didn't ship any up here to Chicago and kill it and make tests?

A. Before we bought this?

Q. Yes, before you bought the stock?

A. Well, now, I think we made purchases from several of those plants, but not with a view of making tests. We knew what the stuff was.

Q. You knew what it was?
A. Oh yes.
Q. And you didn't know what price it was selling at?
A. To the trade in the South?
2055 Q. Yes.
A. No, I didn't investigate that.
Q. Did anybody make that investigation for Swift & Company?
A. I think not.
Q. Do you know Mr. Lavery?
A. Very well.
Q. And who is Mr. Lavery?
A. Mr. Lavery is what we call a general man.
Q. And what does a general man do? What are his duties?
A. A general man has supervision over branch houses in a certain district.
Q. Now, do you know what investigations Mr. Lavery made, if any?
A. I do not.
Mr. Taylor: That is all.
Mr. Horton: That is all. Mr. Hunter.
Examiner Sadler: The witness will be excused.
(Witness excused.)
Mr. Horton: I now wish to offer in evidence the United States Department of Agriculture "Service and Regulatory Announcements" of the Bureau of Animal Industry of said department, numbered 129, 141, 153 and 165, respectively. The purpose of this offer is to show the animals slaughtered under Federal inspection during the years 1916, 1917, 1918, 1919, and 1920; and I am only offering the pertinent
2056 parts thereto. In Number 129 it is found on page 5; in Number 141 it is found on Page 2; in Number 153 it is found on Page 4; and in Number 165 it is found on Page 3. The said exhibits are certified to under the seal of the United States Department of Agriculture.
Mr. Taylor: I object to it as immaterial to the issues in this case.
Examiner Sadler: The objection will be noted and the summaries described in the purpose of the offer will be received as evidence and marked "Respondent's Exhibit 32."
(The paper was received in evidence and marked "Respondent's Exhibit Number 32.")
Mr. Horton: I now offer in evidence the "Monthly Crop

Reporter" issued by the United States Department of Agriculture, for the month of October, 1919, which is certified to by the Department of Agriculture under the seal of the said department. The purpose of this offer is to prove the number of pounds of meat consumed per capita in different sections of the United States, and the information is found upon Page 105 under an article entitled "Sectional Meat Consumption in the United States." I offer the entire article including the statistics.

Mr. Taylor: I would like to ask counsel if what he means to offer is only the portion in the left hand column on
Page 105 appearing under the heading "Sectional Meat
2057 Consumption in the United States" which constitutes about four-fifths of the column.

Mr. Horton: That is right.

Mr. Taylor: Mr. Examiner, I object to the exhibit as incompetent, being a mere estimate based on information gathered from various sources unknown to counsel here, and through various media; no one is subject to cross examination as to the correctness of the figures; I also object to it more particularlly on the ground it is wholly irrelevant to the issues of the case.

Examiner Sadler: The objection may be noted and the summary described by the attorney for the respondent will be received and marked "Respondent's Exhibit Number 33."

(The paper was received in evidence and marked Respondent's Exhibit Number 33.)

Mr. Horton: I now offer in evidence a bulletin issued by the Department of Commerce, Bureau of Census, entitled "Number of Inhabitants by Counties and Minor Civil Divisions" for the State of Georgia, which is issued by the Bureau of Census and certified to under its seal, and gives the census for counties and minor civil divisions for the years 1920, 1910 and 1900. I am offering the entire bulletin for as much as it may be determined or agreed upon by counsel is relevant to the issues in this case, if we can agree; if we
can't agree then I offer the entire exhibit. I offer the
2058 same document in exactly the same way for the States of Alabama and Florida and suggest that they be marked Respondent's Exhibits 34-A, B, and C; A being Georgia, B being Alabama, and C being Florida.

Mr. Taylor: Mr. Examiner, I object to the three exhibits as being incompetent, irrelevant and immaterial, and at the time of making this objection desire to call attention to the

fact there are a number of cancellations, additions and alterations in the various figures and data occurring in red ink in all three of the bulletins, and in some instances in pencil mark.

Examiner Sadler: The objection will be noted and the pamphlets will be received, subject to the objection, and marked "Respondent's Exhibits 34-A, 34-B and 34-C," respectively.

(Papers were received in evidence and marked Respondent's Exhibits 34-A, and 34-B and 34-C.)

Mr. Horton: I now offer in evidence a photostat copy of a compilation made from the records on file in the Bureau of Markets at the United States Department of Agriculture, of statistics collected by the department relative to the receipt, shipment and slaughter of livestock at public stock yards in the United States, in the years 1915, 1916, 1917, 1918, 1919 and 1920. The said photostat copy is certified to be true and correct under the seal of the Department
2059 of Agriculture of the United States.

Mr. Taylor: I object to the exhibit as incompetent, irrelevant and immaterial.

Examiner Sadler: The objection will be noted and the pamphlet will be received and marked "Respondent's Exhibit 35."

(The paper was received in evidence and marked Respondent's Exhibit 35.)

Examiner Sadler: Adjourn until ten o'clock tomorrow morning.

(Whereupon, at 5 P. M. the hearing was adjourned to the following day, September 8th, 1921 at 10 A. M.)

2060 Docket 453

Chicago, Illinois, Sept. 8, 1921

Met pursuant to adjournment, 10:00 A. M.

Before:

C. T. Sadler, Examiner

Present:

Parties as before.

Examiner Sadler: The hearing will come to order. At the request of counsel for respondent the hearing will be adjourned until two o'clock this afternoon.

(Whereupon at 10:15 A. M. the hearing was adjourned to 2 P. M. of the same day, September 8th, 1921.)

2061 Docket 453.

Chicago, Illinois, Sept. 8, 1921.

Met pursuant to adjournment, 2 P. M.

Before:

C. T. Sadler, Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

JOHN M. CHAPLIN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. State your name, please?
A. John M. Chaplin.
Q. You are the same Mr. Chaplin who testified in this case before?
A. Yes, sir.
Q. And I believe at that time you testified you were the head of the plant accounting department of Swift & Company?
A. Yes sir.
Q. And for how long have you had that position, Mr. Chaplin, please?
A. More than twenty years.
Q. Now, Mr. Chaplin, have you any records which will show concisely the number of animals slaughtered by
2062 Swift & Company for the years 1917, 1918, 1919, and 1920?
A. Yes sir.
Q. What records are those, please?
A. This is our yearly statistics.
Q. And are those part of your permanent records?
A. Yes sir.
Q. And are they made in the usual and ordinary course of business?
A. Yes sir, made every year.
Q. And when were the entries in there made with reference to the time which they purport to show on their face?

A. Thy were made immediately at the close of the fiscal years specified, within six weeks or so after the close of the year.

Q. And were they made in your department under your supervision and control?

A. Yes sir.

Q. They are in bound form; are they part of your permanent records?

A. Yes sir.

Q. Now, have you prepared an exhibit showing the number of animals slaughtered by Swift & Company for the years mentioned?

A. Yes, sir.

Q. And is that exhibit prepared from records which
2063 you have before you?

A. Yes, sir.

Mr. Horton: I now offer in evidence the four volumes which Mr. Chaplin has before him, for the purpose of proving the number of animals slaughtered by Swift & Company for the years in question, and ask leave to withdraw the records and present the exhibits. Let it be understood that I am only offering that part of the book which is relevant and that part appears upon Page Number 1 in the pamphlet for 1917, on Page Number 9 on the pamphlet for 1918, on Page Number 9 in the pamphlet for 1919, on Page 9 in the pamphlet for 1920. No other part of the book is offered. In order that the pages referred to may be identified, I ask that they be marked for identification; that is to say, Page 1 of the pamphlet for the year 1917 be marked B-30; Page 9 for the year 1918 be marked B-31; Page 9 for the year 1919 be marked B-32; Page 9 for the year 1920 be marked B-33.

Mr. Taylor: I object to the exhibits as irrelevant to the issues in this case. They are objected to as incompetent; no proper foundation laid.

Examiner Sadler: The objection will be noted and the pamphlets will be received and marked "Respondent's Exhibits B-30, B-31, B-32, and B-33" for identification, with permission to withdraw the originals and substitute an exhibit therefor, which will be marked "Respondent's Exhibit 36."

2064 Mr. Taylor: Is it my understanding, Mr. Examiner, that the originals are not offered and received in evidence, and copies of the portions thereof claimed to be relevant substituted therefor?

Examiner Sadler: My understanding is that the originals were offered and they were received. Mr. Horton stated that he didn't wish the originals to become a part of the record and he made an exhibit of the material parts.

Mr. Taylor: Then we have the anomalous condition of the originals being in evidence and not being marked as exhibits but merely being marked for identification. I have no objection to their being marked in such a way as Mr. Horton desires them to be marked, but I simply want to call attention to the fact that this method is anomalous.

(The paper was received in evidence and marked Respondent's Exhibit 36.)

By Mr. Horton: Q. Mr. Chaplin, these figures which are represented by "Respondent's Exhibit Number 36" are what?

A. They are a compilation made from our Departmental ledgers of all of our plants showing the number of animals slaughtered for the fiscal years mentioned.

Q. And what geographical territory is embraced by the plants mentioned?

A. The entire United States.

2065 Mr. Horton: That is all.

Cross-Examination by Mr. Taylor.

Q. Where are those animals slaughtered, Mr. Chaplin?

A. At our slaughtering plants in the United States. Do you want me to name the plants?

Q. If you please.

A. Our plants at Chicago; G. H. Hammond & Company, Chicago; Omaha Packing Company, Chicago; Plankington Packing Company, Milwaukee; our plants at Kansas City, South Omaha, South St. Joseph, East St. Louis, St. Louis, South St. Paul, Fort Worth, Denver, Sioux City, New York East Side; Harrison, New Jersey; United States Dressed Meat Company, New York; Sturdevant & Haley Company, Boston; Jersey City; VanWagenan & Schickhaus Company, Newark, New Jersey; Harrisburg, Pennsylvania; Cleveland, Ohio; Moultrie, Georgia; Andalusia, Alabama; North Portland, Oregon; Harrington plant, New York.

Q. How long have those plants been owned and operated by Swift & Company?

A. Our Chicago plant has been operated since the company started. The G. H. Hammond Company plant, the Omaha

Packing Company plant, the Plankington Packing Company, Milwaukee, our St. Louis plants, our Denver plant, United Dressed Meat Company, New York, Sturdevant & Haley Company, Boston, were acquired in the dissolution of
2066 the National Packing Company which took place, I think, in 1912 or 1913. The Kansas City plant, South Omaha, South St. Joseph, Fort Worth, East Side New York, Harrison, New Jersey, were built by Swift & Company and operated since the time they were built. They have been operated a great many years; I don't know exactly how many.

Q. Would you say ten years?

A. Ten years or more.

Q. Each of them?

A. Yes sir. That is also true of the South St. Paul plant, of the Jersey City Plant, Harrisburg, Cleveland, they have all been operated for more than ten years under Swift & Company's name. The plants at Moultrie and Andalusia were acquired some time in 1917. The North Portland plant was acquired two or three years ago.

Q. What is the first year which you have figures for of the Portland plant?

A. We have them here for 1919.

Q. That is the first?

A. Yes sir, it is the first. The Harrington plant was acquired in the last two or three years; I don't know exactly when.

Q. What plant is that?

A. Harrington in New York.

Q. Have you figures showing the slaughter in that plant for 1917?

2067 A. No, our statistics for 1917 do not show the Harrington plant.

Q. What is the first year for which you have any report of slaughter for the Harrington plant?

A. 1919 is the first year.

Q. Now, Mr. Chaplin, in making up this compilation which has been offered in evidence, will you please describe the process by which you obtained the figures? Are these figures from the respective plants showing the slaughter, forwarded from the respective plants to Swift & Company, and then in the course of business here come to you and by you incorporated into this compilation?

A. Yes sir. They send us a copy of their departmental

ledger with a summary of the month's business attached to it and that shows these statistics.

Q. Now what do you do with this copy of the departmental ledger? What is the first step that is taken?

A. We place it in the binder and make compilations of it of different department's results and comparative statement of the plant results and volume of business, for the information of the men that look after that in this office. Then they send us also a cumulative report each month, summary of volume and result, which cumulates the statistics of slaughtering, and at the end of the year that cumulative statement shows the total volume and the total slaughtering of
2068 each plant. We take the figures from each plant and put them all together on one sheet of paper.

Q. And then you take the report of the total slaughter from each of these plants, insert them on this page which is marked for identification in each case, and add up the totals, and the totals are what are now shown in the sheet which appears here as Exhibit Number 36, is that correct?

A. That is correct.

Q. And that is your method of arriving at that Exhibit 36, is it?

A. Yes, sir.

Mr. Taylor: Now, Mr. Examiner, in addition to my objection to these exhibits as incompetent I wish to move to strike them out for the reason that they are shown to be wholly incompetent and not the best evidence.

Examiner Sadler: The motion to strike will be noted.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness Excused).

Mr. Horton: I now offer in evidence a pamphlet from the United States Department of Agriculture, Bureau of Animal Industry, compiled by John Roberts of the Editorial Office of the said department and bureau, entitled "Meat Production, Consumption, and Foreign Trade in United States, 1907-1920". This pamphlet has not been certified to
2069 under the seal of the department, but I understand that the attorney for the Commission waives that formality.

Mr. Taylor: I shall make no objection on that ground, Mr. Horton.

Mr. Horton: The part of the pamphlet that I am offering is contained on Page 2 and gives the statistics of animals slaughtered annually under Federal inspection and esti-

mated number slaughtered otherwise, (including farm) in the United States. Inasmuch as this is the only pamphlet that we have, I would like to retain it and I have had a copy made of the page in question, and offer the copy instead, if there is no objection. It has been checked and found to be correct.

Mr. Taylor: Mr. Examiner, without objecting to the pamphlet on the ground that it has not been certified, and not objecting to the copy in lieu of the portion of the pamphlet offered, yet I do object to the exhibit on the ground that it is incompetent; no proper foundation has been laid for its admission; no information is before the Commission as to the method of obtaining the data set forth in the compilation; no opportunity for cross-examination of the parties who have secured this information apparently from various sources is afforded. Furthermore I object to it as irrelevant to the issues in this case.

Examiner Sadler: The objection will be noted and the pamphlet will be received, subject to the objection, and
2070 marked "Respondent's Exhibit 37", with permission to withdraw the pamphlet and substitute a copy of the relevant part thereof, which will be marked "Respondent's Exhibit 37".

(The paper was received in evidence and marked Respondent's Exhibit 37.)

Mr. Taylor: Mr. Examiner, do I understand your ruling to be that any portion of the pamphlet is relevant?

Examiner Sadler: No, I didn't say any portion, I said the relevant parts.

Mr. Taylor: But I am objecting to the portion as not relevant.

Examiner Sadler: Well, Mr. Horton is taking a certain page here and wants to introduce that page.

Mr. Taylor: Yes I understand that, but I understood you to say that the relevant portion of it will be received. I wanted to know whether that constituted a ruling that any portion of it was relevant?

Examiner Sadler: No, I am not ruling on the relevancy of the exhibit.

Mr. Horton: It is understood, Mr. Taylor, that for the purpose of the exhibit it has the same force and effect as though it had the seal of the Department of Agriculture upon it?

Mr. Taylor: Yes, I make no objection on the ground that it has not the seal and certificate of the Department.

Examiner Sadler: Adjourn until 2 P. M. tomorrow.

2071 (Whereupon, at 3:30 P. M. the hearing was adjourned to the following day, September 9, 1921, at 2 P. M.)

2072 Docket 453.

Chicago, September 9, 1921.

Met pursuant to adjournment, 2 P. M.

Before:

C. T. Sadler, Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

Mr. Horton: I now offer in evidence the books previously identified by the witness Thompson and marked B-22 and B-23; and also the books identified by the witness Williamson and marked B-27, B-28 and B-29, these being the same books that were also identified by the witness Davis.

Mr. Taylor: All by Davis?

Mr. Horton: Yes, they were all identified by Davis, as I remember.

Examiner Sadler: Any objection?

Mr. Taylor: No objection.

Examiner Sadler: The books will be received and marked Respondent's Exhibits 38, 39, 40, 41, and 42, respectively.

(The books were received in evidence and marked Respondent's Exhibits Nos. 38, 39, 40, 41 and 42.)

2073 GEORGE D. ROGERS was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. State your name, please?
A. George D. Rogers.
Q. Where do you live, Mr. Rogers?
A. 445 82nd Street, Brooklyn, New York.
Q. What is your business?

A. Provision Manager for Swift & Company, Jersey City.
Q. And how long have you been so employed?
A. Since February, 1920.
Q. What was your business before that?
A. Manager of the Buffalo Hog Killing Plant, from August to October prior to that—
Q. August what year?
A. The August—well, October, 1919, to February, 1920, when I went to Jersey City.
Q. And what was your occupation before that?
A. With the exception of a lapse from August to October, which accounts for a vacation and some general work around the Chicago office, I was manager of the Andalusia Packing Company, later Swift & Company.
Q. When did you first go to Andalusia?
A. July, 1917, I think, July 12th.
2074 Q. How long did you remain there?
A. Until August, 1919.
Q. Now what was your employment before you went to Andalusia?
A. Department Manager, Chicago office.
Q. And how long have you worked for Swift & Company?
A. About 11 years.
Q. Now when you went down to Andalusia, did you have any conversation with any of the officers or directors of Swift & Company with reference to what your duties would be down there, what you would do when you got there?
A. Yes, I was called back from New York by Mr. G. F. Swift, Junior, and he outlined only in a general way what they had in mind; he told me at that time that they had under negotiation and prospect of buying the Andalusia Packing Company; that it was a local industry in Alabama, where they thought that diversified farming and stock raising would develop. He said "There is not any of us very well posted on the conditions."
Mr. Taylor: Now Mr. Examiner, I object to the conversations as incompetent and immaterial.
Examiner Sadler: The objection will be noted.
By Mr. Horton: Q. Proceed, please, Mr. Rogers?
A. He said that he had no instructions to give me;
2075 that I was to go down there and familiarize myself with general conditions of the market, merchandising, and everything pertaining to the operation of the plant as the local people were conducting it; we were to make no rad-

ical changes and I was to use the best judgment I could in the buying of the livestock on the market and the selling of our products; and that is the only instructions I had when I went to Andalusia.

Q. Did you proceed to follow out that policy, or otherwise?

A. Yes sir, I did, to the best of my knowledge and belief.

Q. Now, when you say that diversified farming and stock raising would develop, just what do you mean by that?

Mr. Taylor: That is objected to as immaterial.

Examiner Sadler: The objection will be noted.

By Mr. Horton: Q. You said you thought it would develop. What do you mean by that?

A. Well, for instance, the government at that time, as I understand, was making experiments on different kinds of Southern feed and whether they could raise cheaper feed, so they could produce pork in that country economically to compete with Northern markets with the same class of products, and so on. Before they had gotten into the stock industry to any extent it was mostly cotton and large plantations. During the time of my stay in the South these plantations were owned generally by men in towns and they were

2076 splitting them up into smaller farms and they were trying to raise livestock on them; livestock to fertilize the ground so it would produce other products, and so forth, more like we were doing in the north. That is what I mean in a general way by diversified farming. The year before I went there they suffered quite a loss on cotton. History shows that every so often the farmers would lose practically all they had saved on the one crop proposition, and the leading men in the South were trying to change that so that the farms throughout that section would have some cattle, some hay, some grains, some velvet beans, some peanuts, and some cotton, so in case they had a bad crop on any one of them, that it would not entirely strap the country.

Q. You mean the cattle should also include hogs?

A. Yes, cattle, hogs, and other small stuff.

Mr. Taylor: Now, Mr. Examiner, that the witness has completed his answer to the question to which I objected, and shown how really irrelevant it is and incompetent it is, I move to strike it all out.

Examiner Sadler: The motion to strike will be noted.

By Mr. Horton: Q. Do you know D. L. Thompson, who

was formerly a salesman for the Andalusia Packing Company?

A. Yes; he was a salesman for them when I got there, and continued in my service for several months.

2077 Q. Now, Mr. Thompson has testified, in effect, that as soon as Swift & Company bought the plant and you arrived on the ground and got firmly established and got hold of things, that you raised the price of meat arbitrarily three cents a pound. Is that statement correct?

A. No sir, that is not; absolutely not.

Mr. Taylor: Now, Mr. Examiner, I wish to object to that as incompetent evidence. The record contains evidence of what was done in the way of raising prices, and I move to strike out the answer.

Examiner Sadler: The objection and motion to strike will be noted.

By Mr. Horton: Q. Have you examined Respondent's Exhibit No. 43 which is now before you?

A. Yes.

Q. I will ask you to refer to that, and also to these invoice books here, if necessary, and tell us just what actually happened, and whether or not there is any basis for Mr. Thompson's conclusion?

Mr. Taylor: Now, Mr. Examiner, I object to that, as wholly unnecessary. We have the record here; these invoices have been taken without objection; so that the Commission and the Court will have ample opportunity to make their own comparison and draw their own conclusions.

2078 It is not a matter which is necessary for the witness to interpret.

Examiner Sadler: The objection will be noted.

A. To begin with, when I got to Andalusia, we did not assume charge of that plant. I got there, say, July 12th, to be exact, and it was not until July 24th that Swift & Company came into possession of the plant. During that time neither I nor the man in charge of the accounting end, who later took charge of the accounting end, had any jurisdiction. All either one of us could do or did was to try and familiarize ourselves with their methods. Neither did the resident manager for the Andalusia Packing Company do any aggressive marketing of any kind; he didn't want to, during the time of the pending negotiations of buying that plant, adopt any radical policy or make any radical changes to help his condition of stocks, which I later found was quite a handicap to

us after we got in charge of the plant. Neither could I do anything during the first two weeks. I am stating all this because it will lead up to this supposed three cents advance which we didn't arbitrarily advance, and I can easily prove it by these sheets, which are known as Respondent's Exhibit No. 43.

Mr. Taylor: Now, Mr. Examiner, I move to strike out all this statement by the witness, as not responsive, as incompetent, and as irrelevant to the issues here.

Examiner Sadler: The motion to strike will be noted.

2079 By Mr. Horton: Q. Proceed, Mr. Rogers, please.

A. The first thing that we did on taking over the plant was to go through the plant; we found the plant, from our viewpoint, had a great deal of products that were too old. We knew nothing about the cures; we knew nothing about the age of the products; the records were not in such shape that you could tell the age of any individual lot, to any degree of certainty; and the lots in piling had become mixed. All during this two weeks the cost of hogs was advancing. On the first of August, about this time, we should normally come into our best selling season on smoked bacon, and on hams, but due to the nature of the product we had there, we didn't realize full market values for it. The management, during the time that the negotiations of taking the plant over were pending, was not following the market, with the result that these sheets show that they sold their smoked bacon, which is the side of the hog, first cured in dry salt, and then taken to the smoke house and shrunk, with additional labor and handling put on it, at practically the same price they sold their products without regard to what it was at a price. That price was not on the market. We had the sharpest kind of competition in that country all the time I was there, and I found by grading this product that it would bring more money, which accounts for the apparent ad-

2080 vance in price as shown by these sales of three cents a pound; but if you will look these sheets over a little more carefully you will find at lapses of about a week, sales at considerably under what we considered the market. That, gentlemen, is the rejects that we started throwing out of the products as we graded it, so as to make the product be sold nearer uniform and nearer in line with what our competitors were offering at the prices we were asking. I only had three outlets; that was Mr. Thompson, a salesman on our own payroll; and two salesmen of the Sessoms Grocery Company,

who sold our products in the towns that they made, selling the wholesale grocery products, and which they sold on a commission. Now, during the month of August, our hog costs advanced ten to fifteen per cent., as shown by Exhibits 28 and 29.

Mr. Taylor: Mr. Examiner, I wish to object to this statement of the advance of hog costs; it is not competent; the proper way to show that is by records.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I wish to move to strike out the statement of the witness that the hog costs did advance.

Examiner Sadler: The motion to strike will be noted.

A. (Continuing) Hams, which should have advanced proportionately, as they represent 14 per cent. of the hogs, actually sold for less money at the end of August than they did when we took the plant over. Now, the reason for
2081 that was that the product was not what it ought to be from our standard. It was old cure; they had too much on hand; and before I could get out from under my stock, I appealed to Chicago to ask our branch house organizations throughout the South to help me move this product; that, in my judgment—that I thought the best thing we could do was to sell this product out as soon as we could and replace it with new cure, graded and cut our way and at our ages that we knew something about. During the month of August we made fresh pork sausages. The trimmings from those books cost us more money. Still, due to the competition that we were having in that country, we only advanced our sausage half a cent a pound, which was not near enough to let us out.

Mr. Taylor: Mr. Examiner, I object to all of this as wholly incompetent, and move to strike it out.

Examiner Sadler: The objection and motion to strike will be noted.

Mr. Taylor: This being all a voluntary statement by the witness, I have no opportunity to object to questions and therefore have no recourse except to move to strike out the statements after they are made.

By Mr. Horton: Q. Please proceed, Mr. Rogers, and finish your statement in your own way and your own words.

A. I don't know any other way to tell it except in
2082 my own way as I found the conditions there; and that is as I found them. Referring back again to Respondent's Exhibit 43, these actual sales and the way the products moved is the best evidence of what I have just told you.

Smoked clear bellies, or bacon, as it is called in that territory, is the best seller of all the cuts they had, and is the only product on which we could ask more money. We had no monopoly of the trade down there at any time; and I am convinced today that we were the low seller, which was brought about due to the lack of aggressiveness either on our part or on the part of the Andalusia people during the pending of the negotiations of the taking over of the plant; and is the only reason why it would be possible to get a little more for your products.

Q. I notice a little further on, or a little later in the season, Mr. Rogers, that you discontinued selling the clear bellies and started to sell rib bellies. Please tell us why that was?

A. I wanted to refresh my memory as to how long it took, and these sales sheets bear it out that it was about a month after we took over the plant. In other words, it took us about a month before we could get into the cellars and regrade all our products. We made the sales, say, the end of this week for shipment the first of next. We filled them, if they were sold at the market price, with the best of the products, throwing out as we went along, any pieces that we
2083 would consider objectionable. These pieces that we considered objectionable were thin bellies, just the hide and a small covering of fat and lean. They were thrown aside, and the salesmen told that we had whatever it was, half a dozen or fifty pieces, of those bellies graded out that we were willing they would sell for what they could get for them, say, two or three cents under the other grades. We received a good many complaints the first week or two I took charge, on our products not being anywhere near as good as our competitor's for the same money; and in grading the products we found the condition just as I have stated, that there was mixed in thin ones, thick ones, and real soft and oily bellies that should not have gone into even a second grade of dry salt belly. The hams—there is not the difference in hams that there is in bacon sides. You take bacon of any kind, dry salt, or sweet pickled, it is much more susceptible to age, due to the thinness of it; it will become much more salty in cure; it will turn yellow; all of these conditions we found in that product there; and it is one of the causes for the complaints which we checked up and found justified, and is our reason for going to the expense of grading the products so as to throw out all objectionable products, and sell it and place it to the best advantage at whatever it would bring,

which invariably went to some commissary. Now, hams represent about 14 per cent. of the hog.

2084 Q. That is, of the dressed weight of the hog?

A. Yes. Bellies, 14. Both of those products should have brought more money, but due to the cure and the age of the products we had to sacrifice the hams and the shoulders; and even with the advance that we asked after regrading these bellies we did not get the advance that the increased cost in hogs for the same period justified asking. We had, when I was there, all the big competitors from the North, such as Armour, Wilson, Morris, Independent, through brokers, besides all the local packers, the Birmingham Packing Company—

Mr. Taylor: Mr. Examiner, I wish to object to all this statement as to what other packers were in the market there, and move to strike out the statement so far as the witness has already made it.

Examiner Sadler: The objection and motion to strike will be noted.

A. (Continuing.) Alabama Packing Company, White Provision Company, Shipley Packing Company, Mobile Packing Company, and others.

By Mr. Horton: Q. I take it that the last part of your answer was a continuation of your statement, and not a reply to my last question about the rib bellies?

A. No, it was a continuation.

2085 Q. Now, I noticed the time comes when you discontinued selling clear bellies and sold rib bellies. Will you please explain why that was?

Mr. Taylor: I object to that, as having already been gone into very fully.

Examiner Sadler: The objection will be noted.

A. In the Fall we ran into a great many thin and poorly finished hogs, light weights, poor feed, with the result that when you cut those hogs the thickness of the bacon was not enough to make much of an edible piece of meat; so in order to cut more out of the hogs we left on those thin pieces the spare-ribs in them, what is known as the spare-ribs, which, of course, would carry considerable more meat on the belly.

By Mr. Horton: Q. And you wish us to understand by your answer that you discontinued making the clear bellies, and continued making the rib bellies?

A. On the light hogs, and only saved for the clear bellies those of more suitable thickness. We tried several experi-

ments of trying to get fancy bacon out of the hogs, but our percentage was very, very small; the quality of the hogs was not such that we could get a fancy piece of bacon or breakfast bacon out of them that we could sell in competition with Northern hard fed pork like our Premium belly.

Mr. Taylor: Now, Mr. Examiner, I wish to object to
2086 all of this answer for the additional reason that it is wholly irrelevant to the issues, and move to strike it out on that additional ground.

Examiner Sadler: The objection and motion to strike will be noted.

By Mr. Horton: Q. I notice on Respondent's Exhibit 43 that there is an occasional sale of what is under the head of "B. Bacon"; I presume that is "Breakfast Bacon?"

A. Yes, that is breakwast bacon, so called by the Andalusia Packing Company. It is dry cured. That is, what is known as a clear belly is cured in a sweet pickle brine, whereas this breakfast bacon is put in a box with a dry mixture on it and allowed to make its own pickle from the juices of the meat, which produces a firm piece of meat. They, as you will see from these sales, saved a few pieces which they had cured when we got there. It was for the better class of trade, both in Andalusia and in nearby towns which were buying Northern bacon, and we pursued the same policy of trying to save any that were suitable for this grade, although it was very small.

Q. That is, the quantity that was suitable for that grade was very small?

A. Yes.

Q. And did you at any time have any amount of that
2087 product on hand?

A. No, never had; never had any of that on hand; that would sell very readily.

Q. Now, what is the difference between the clear belly and the rib belly?

A. The clear belly is the side of the hog with the ham and shoulder off, and the rib out, whereas the rib belly is the same cut with the rib left in and so cured and smoked. It is purchased both dry salt and smoked, the difference in the price of the smoked representing the additional shrink in smoking the product and the additional labor.

Q. Now, to come back to Mr. Thompson's contention that you arbitrarily raised the price of meat three cents; I will

ask you if there was any item here except the bellies which were raised three cents?

A. No, no items at all.

Q. Now, as I understand your testimony, that raise was due to a change of the grade?

Mr. Taylor: Now, Mr. Examiner, I object—

By Mr. Horton: Q. (Continuing.) That is, you grading out the poor ones from the good one?

Mr. Taylor: I object to the form of the question.

By Mr. Horton: Q. Is that correct or not?

2088 A. Yes, that is correct.

Mr. Taylor: I object to the form of the question, and I object to it as incompetent. The record is there and will speak for itself.

Examiner Sadler: The objection will be noted.

By Mr. Horton: Q. How was the old company selling bacon, the smoked clear bellies, before you made this change?

A. They sold them as they ran, and that is the reason for the complaints against the products. For instance, a small dealer would buy a fifty-pound box of bacon, and in that box he would be very apt to get one or two pieces that were not worth anywhere near the asking price of the total products in the box, with the result that they got an average lower price for their products than they should have.

Mr. Taylor: Mr. Examiner, this manifestly is wholly incompetent. This witness is talking now about something before he was there, something that he knows only by hearsay, if he know it at all, and I submit the record ought not to be incumbered any further with this character of testimony so called.

Examiner Sadler: The objections will be noted.

Mr. Taylor: I wish to move to strike out the entire last answer.

Examiner Sadler: The motion to strike will be noted.

2089 By Mr. Horton: Q. And whether or not that fact is taken from your observations while you were on the ground there?

A. It was taken absolutely from my observation and investigation, and is the reason I started grading the products.

Q. I call your attention to a sale made on August 20th, Chapman Mercantile Company, 54 pieces of smoked clear bellies, 957 pounds at 25¼ cents. In your judgment, is that your first grade or your second grade?

A. That is the rejects from the first grade.

Q. On August 22nd I call your attention to a sale made to the Martin Veneer Company, Bluff Springs, Florida, 6 pieces, 103 pounds, at 24½ cents.

A. That would be some more rejects.

Q. Now, by "rejects" you mean to imply that these were not fit for food, were not edible?

A. No, I don't mean that; I mean that they were not suitable to go into the straight run, from a quality standpoint only. They were so thin that when the customer who got them cooked them he would not have near the value in that piece of bacon that he would in those that we had graded out, or from which they were graded. In other words, by taking out those thin ones we left the rest of them all more of a uniform size and thickness, more of a standard, a more dependable grade, so when we quoted them to our trade they
2090 knew what they were going to get.

Q. Mr. Thompson has testified further that he protested to you against this raise in price and you told him that that was done on instructions from Chicago. Is that true, or otherwise?

A. That is not true. I never made any such statement to Mr. Thompson, because Chicago in no way dictated the prices that we were to get for our products at any time. We were to merchandise them to the best of our ability, quality considered, and that is the only instructions I ever had.

Q. Mr. Thompson further testified that you had, in effect —I think the expression he used was, that you had given him a dirty deal, and he seemed to be very much angered against you. What was the—

Mr. Taylor: Mr. Examiner, I object to the assumption by counsel in his question, not in accordance with the record.

Mr. Horton: I think the record will show on that point, but what was the trouble—

Mr. Taylor: The record will show that he expressly said he had no feeling.

By Mr. Horton: Q. What was the trouble between you and Thompson, if any?

A. I am surprised to learn that there was any feeling.

Mr. Taylor: I think if you will read the record then you will not be surprised. Mr. Thompson expressly testi-
2091 fied in that regard that there was not any feeling.

A. (Continuing.) Mr. Thompson left our service, as he told me, for more money. He asked for a greater increase in salary than we felt we could afford to pay a man working

in his capacity. As a special favor, I asked his new employer, Mr. Knox, a merchant in Andalusia, if he could let Mr. Thompson take a new salesman over his route, I believe, the first three days of the week, Monday, Tuesday and Wednesday. He said yes, that would be very satisfactory to him, and Mr. Thompson did take a new salesman over that route. He then went to Mr. Knox in the middle of the week, and in coming to a salary adjustment I asked Mr. Knox what, if any, arrangement he had made with Mr. Thompson. He said "Why, that is all right." He said "I am taking care of Mr. Thompson in a salary way. It is all right. He came to me in the middle of the week instead of Monday, but that is perfectly all right."

Mr. Taylor: Mr. Examiner, I wish to object to this conversation with Mr. Knox, as incompetent and improper in this proceedings.

Examiner Sadler: The objection will be noted.

Mr. Taylor: I move to strike out the conversation as reported here, with Mr. Knox.

Examiner Sadler: The motion to strike will be noted.

By Mr. Horton: Q. Proceed, please.

2092 Mr. Taylor: I would like to ask the witness at this time if Mr. Thompson was present at the time of this conversation?

The Witness: No, he was not. I then told Mr. Knox that that was very fine, that we appreciated his courtesy in allowing Mr. Thompson to help us out in that emergency, and that we would have our auditor send Mr. Thompson a check for the additional service he rendered us, irrespective of whether he got any pay from Mr. Knox for the first three days. We sent Mr. Thompson a check in payment of those services, and it was returned.

By Mr. Horton: Q. By Thompson?

A. By Thompson, as far as I can recollect now, without any memorandum. However, later on, I got Mr. Thompson on the 'phone, and asked him if he had received the check and if there was any trouble about it, and he said that he must have a week's pay or nothing. I explained to him that Mr. Knox had told me that he was taken care of in a salary way, and that while we were only too glad to pay anybody for any services he rendered us, that that was as far as I thought we should go. And from that time on I don't know what happened to the check, whether he accepted it or not.

I never heard any more from Mr. Thompson directly or indirectly.

2093 Q. I further understand you to testify that when you reached Andalusia and during the first month or two of your residence there, and during the period that you first took charge of the plant, you found a large stock of goods on hand which apparently had sold very poorly because they were in an aged condition. Now, would you have been able to sell that stock, in your judgment, through the usual channels through which the Andalusia Packing Company was merchandising their product, or not?

Mr. Taylor: I object to the question. I object to the form of it as leading; I object to it as assuming facts not shown; I object to it as immaterial; I object to it as incompetent and calling for a conclusion of the witness; and as calling not only for conclusions, but speculations of the witness.

Examiner Sadler: The objection will be noted.

A. No, we would have never gotten out from under the products without our organized branch house help. As far as we could, we started opening up new territories for the sale of our product in that plant, and in spite of that fact we still had to have additional help from a Swift branch house to move it before it deteriorated further than it had at the time I got there.

2094 By Mr. Horton: Q. In your judgment, could the Andalusia Packing Company, as it was organized when you went down there, could they have moved that product without a large loss?

Mr. Taylor: I object to that also as calling for the conclusions and speculations of the witness.

Examiner Sadler: The objection will be noted.

A. In my opinion I do not believe they could, as I feel that we merchandised it faster than they could have done.

By Mr. Horton: Q. Now, with this product on hand, was it at any time your desire to withhold any of this from the market, keep it back, or was it otherwise?

Mr. Taylor: I object to that also as wholly incompetent and immaterial.

Examiner Sadler: The objection will be noted.

A. At no time. We were most aggressive for sales of this product from the time it became our property until the last of it was sold, and we felt that our first loss would be the smallest, and I believe it was; what I mean by that, every

week or month it stayed on hand we stood a chance of getting less for it.

Mr. Horton: You may cross examine.

Cross-Examination by Mr. Taylor.

Q. Mr. Rogers, did I understand you correctly in that you desired to create the impression here that the business methods of the old Andalusia Packing Company were very
2095 unbusinesslike and not calculated to result in a success? Is that the idea you wish to convey?

A. Have I said that?

Q. I asked you if that is the idea that you wished to convey, or the understanding that you wish to be gathered from what you have said?

A. That they were an unbusinesslike organization?

Q. Yes, and that they did not conduct the business in a way well calculated to result in success?

A. I wouldn't be in position to answer that.

Q. Then that is not the idea you wish us to gather from what you have said?

A. That they were an incompetent concern?

Q. I didn't say that. I said that they conducted their business in such a way as not best calculated to result in a successful handling of their products?

A. I couldn't answer that question. That point I would like to make clear at this time is that during the pending of the taking over of the plant by Swift & Company, no aggressive policy was adopted by either the Andalusia management or ourselves towards moving this product at less values than what they considered the market at that time.

Q. And you have said, I believe, that had you pursued the old policy of selling of the Andalusia Packing Company that you could not have moved these goods?

2096 A. I don't say it that way. I don't want to be understood that way.

Q. I don't know that you did say it that way.

A. I do make the assertion that I do not believe pursuing the policy of the Andalusia Packing Company that we could have sold the product as soon as we sold it through our organization.

Q. Now you say that you had, as you went there, or, rather, the Andalusia Packing Company had just three outlets for their goods. What were those outlets again?

A. They had three salesmen outlets, one salesman on their own payroll and two on the payroll of the Sessons Grocery Company.

Q. And do you wish the record to show that it is your statement that they had only those three outlets for their goods?

A. No, they had the usual brokers that we all have gathered in different towns.

Q. Would you not consider those as additional outlets?

A. Yes, they were additional outlets, but not under their direct control.

Q. Now, what were those additional outlets aside from the three?

A. Brokers at Birmingham and Montgomery.

Q. And who were those brokers?

A. The one at Birmingham was a party by the name
2097 of Allen; the initials I do not remember.

Q. E. P. Allen?

A. I believe so. The one at Montgomery was—I don't remember what it was now, but there was one at Montgomery. There was also another one at Atlanta that they occasionally sold to.

Q. Only occasionally?

A. It depends upon what you mean by occasionally. What do you mean by occasionally.

Q. You used the word. That is what I want to find out, what you mean?

A. Whenever they had surplus products to offer.

Q. It was only when they had surplus products that they employed the Atlanta broker?

A. I don't know that; I would not be in position to answer.

Q. How do you wish your answer to read then? Your answer now, as I recall, reads that there was a broker at Atlanta whom they occasionally employed when they had surplus products to get rid of. Is that the way you wish it to stand, or do you wish to change it?

A. No, that is all right.

Q. Now, how soon after you went there did you commence to utilize the Swift & Company branches for the output of your product? By "your products" I mean the products of the Andalusia Packing Company?

2098 A. I can't say definitely. It was in the six months period somewhere.

Q. Why, you have testified with a great deal of fluency heretofore, not only as to facts, but many conclusions. You certainly are not deficient—

A. I can't give you the exact date. It was almost immediate, that we asked for help.

Q. And you asked for that help in Atlanta, Birmingham, and Jacksonville?

A. No, not in Birmingham. Our general man was in Birmingham, who controlled those houses. We had no connection with our houses except through the general man.

Q. And you appealed to the general man and not the houses?

A. The general man, and later to the houses direct as he directed.

Q. And your appeal to the general man was almost immediate after you went down there and took charge?

A. As soon as we realized the channels we had to sell through were not great enough to allow us to get out from under this product promptly.

Q. I presume it was before you got off the channels you already had, Mr. Rogers?

A. We never got off any channels; I don't know what you mean by that.

Q. You mean to say you never stopped sending 2099 goods to Mr. Allen?

A. Only as our houses absorbed our product. We never got Mr. Allen off of any surpulus that we had to offer.

Q. But your house at Birmingham began to handle the goods then before Mr. Allen stopped handling them?

A. Oh yes.

Q. And it was because of the fact that your house at Birmingham was filling the markets with your goods there that you began to stop sending to Mr. Allen at that place?

A. No, it was because the house at Birmingham is a house who processes; they could take our product and sweet pickle and smoke it there. We could make straight carloads to our Birmingham house of other items that he can handle to better advantage than Mr. Allen. Products in sweet pickle will carry better than it would in a fresher state, and it was advantageous for us as far as possible to send our product to Birmingham over Allen because he had the facilities to give us and our product when it got there, to merchandise it in a better condition than we found Mr. Allen was able to do without any refrigeration.

Q. And it was when you had the process of disposing of the stuff completely established with your Birmingham house, that Mr. Allen stopped handling it, I assume?

A. It was very gradual. Mr. Allen understood at all times that it would be.

2100 Mr. Taylor: Mr. Examiner, I wish to strike out the witness' statement as to what Mr. Allen understood.

Examiner Sadler: The motion to strike will be sustained.

By Mr. Horton: Q. Finish your statement, if you wish to, Mr. Rogers. Mr. Taylor cut you off.

A. I would like to make the point clear as to the situation in regard to Mr. Allen. Mr. Allen was the Andalusia Packing Company's outlet in Birmingham. We continued to transact business with Mr. Allen; and Mr. Allen, both on the 'phone and on personal visits, was told repeatedly that eventually we expected to market all of our products through our own outlet, either direct from the plant or through our branch house facilities scattered through the various towns, and that he was at liberty to make any other hook-ups on any other accounts that he wanted.

By Mr. Taylor: Q. You told him this right at the start?

A. Yes.

Q. The first interview you had with him?

A. Yes, the first interview, the first time he raised the question. I don't know how soon it was after we got control that he raised it.

Q. Now, what was the situation in regard to Mr. Miller at Atlanta?

2101 A. Is that the broker that was there? What are his initials?

Q. J. W. Clarke Company is the name under which he did business, but Mr. Miller was the man who conducted it?

A. The same applies to Mr. Miller. He raised the question with me over the long distance 'phone shortly after we came into control, and he was told the same as Mr. Allen, that we would continue to offer any surplus products that we had.

Q. And did you commence to do business through your branch house at Atlanta right away after taking charge at Andalusia?

A. No.

Q. I mean the Atlanta branch house?

A. No, we didn't. That is under another jurisdiction.

Q. Through what branch house were the Andalusia goods put out in Atlanta if they ever were sold there?

A. Well, Swift & Company, Atlanta; we only have one there.

Q. And how soon did this conversation that you speak of, with Mr. Miller, take place. This telephone conversation?

A. I couldn't say exactly; the first time he called up and raised the question, which was not very long after we took charge.

Q. Do you recall having any correspondence with Mr. Miller in regard to the matter?

A. I don't remember any specific letters bearing on that, unless he asked us to write him one, which we of course would be glad to do, as our method of selling was no secret.

2102 Q. Now, did you know all that was going on there at the Andalusia Packing Company, or was there some of the business there conducted by somebody else with your knowledge?

A. We had the business divided into departments over which was a man in charge supposed to be competent to handle it, and refer any questions for decision that he didn't feel competent to take the responsibility for answering or handling. I wouldn't, of course, know every detail that went on in a plant of that size.

Q. Mr. Rogers, you say you found yourself very long on certain products when you went to Andalusia. What were those products?

A. Hams, bellies, and shoulders particularly?

Q. And how long a time was it before you were able to get rid of the surplus?

A. It was all surplus.

Q. Well, did you get rid of them in a week or so, or a month or so?

A. No, it was strung out over quite a period. I am not able to say now without referring to the records.

Q. What is your best recollection as to the period?

A. I wouldn't want to say, after two and a half years' absence.

Q. But it is your recollection that it took a number of months, is it?

A. A number of weeks.

2103 Q. Oh, a number of weeks? Well, do you suppose it took more than one week?

A. Yes, it took several weeks; it took a longer period

than we felt the products made friends, due to its condition in our inspection on arrival.

Q. And you were getting a higher price right along for it, weren't you?

A. No, we were not. We were getting a lower price for the joints.

Q. For the ham, for instance?

A. The hams are joints. We were getting a lower price at the end of thirty days after we took it over, for the joints or hams, than we were getting at the time we took them over, although the hog market had advanced ten or fifteen per cent, which should have justified, if the product had been what it should have been, an increase in value.

Q. Is it your experience as a packing house man, a manager of packing houses, that the price of pork products is based upon the cost of hogs?

A. It is based on cost of hogs, general stocks, geenral business conditions; various things enter into it; no two days are alike.

Q. And as the cost of hogs goes up the cost of pork products goes up correspondingly?

A. The price of all pork products which are a daily
2104 turn-over or a rapid turn-over should naturally advance. They are going to have to advance if you are going to be able to continue to buy hogs.

Q. About how long a time would you say you were long on hams and wanted to get rid of them?

A. How long a time?

Q. Yes.

A. We were long on hams from the day we got there until the last one was sold. Just when that was, I can't say.

Q. About how long? How long would you say now?

A. I don't know.

Q. Was it a short job that you cleaned up, say, by the first of September, or did it go on longer?

A. It went on longer; it went into September some time.

Q. Did it go into the winter?

A. No, I don't think so, not with the packing season starting we would not want them to.

Q. And what means did you take to get rid of these surplus hams, aside from your branch houses, if any?

A. Brokers and branch houses.

Q. And by "broker," you mean the brokers you mentioned, Miller and Allen?

A. That is right, provided they could merchandise them for something better than a dump price.

Q. Well, would you say that you were cleaned up of
2105 surplus hams by the first of November?

A. I wouldn't be able to say that positively one way or the other.

Q. What is your recollection at the present time?

A. I don't remember.

Q. You think by the first of December you had cleaned them up?

A. I wouldn't want to answer that question definitely without referring to the records.

Q. As far as you recall now you had a pretty good supply of pork products there right along?

A. No, I wouldn't say that; we were in and out on different items; it depends on what they are.

Q. It was certain seasons of the year that you were short, was it not?

A. Short of what?

Q. Pork products generally?

A. That is pretty hard to answer. You take sausage trimmings that went into sausage, we would be short in the summer. And the hams that were produced from the packing season, which is in the winter months, are not necessarily long or short, if they are a quality product, up to the beginning of the new fall accumulation; a ham that is old and is beyond the age limit that we consider is good for a mild cured ham, is long at any time; you are long on it until
2106 you get rid of it, whether it is in the height of the selling season or not. This product that we had at Andalusia, due to its age, puts a different construction on what you mean by long or short. It puts a different construction on it. Still, at the same time, if we thought that we could get out on these hams while they are wholesome and edible, through our channels, we would not try and dig up a new channel to dump them at a big sacrifice. In other words, the product considered, I tried to use the best merchandising judgment that I had, general conditions governing.

Q. I show you Commission's Exhibit Number 85, and ask you to look at it and tell me whether or not you recognize it?

A. I recognize it as one of our price lists.

Q. Now, take these other products on which you were long, aside from hams, what were they?

A. Bellies until they were sold; shoulders until the last piece.

Q. Take bellies; it is your present recollection that the prices went down on bellies, that you sold them for less as time advanced?

A. Bellies, as I have already explained in the previous testimony, were the only items on which we got even a small advance, and we got that advance by re-grading and throwing out rejects, which raised the quality of the product that we sold at the increased price, to that value; if we had
2107 left the rejects in them I don't believe we would have merchandised them at even the small advance we did get.

Q. And for how long a period were you selling these rejects at lower than the market price?

A. Until the entire lots were re-graded and we had them all out; I would say up to the end of August, or, rather, around the first of September; I think all the rejects were out in a period of about thirty days or so after we took charge.

Q. Now, how about shoulders? What kind of prices did you get for those, increase or decrease?

A. We got a decrease on the whole; as to the shoulders, we had quite a number condemned on us due to being sour. The Government condemned some shoulders; I am not in a position to say how many. We had a pretty hard time with the shoulders due to the age of them and the cure; they sold for whatever we could get.

Q. And how long was it before you got rid of these shoulders?

A. I couldn't say from memory.

Q. Well, was it one, two or three months?

A. I don't know that. They were merchandised the same as the hams were, as fast as we could; I can't say from memory how many we had.

Q. Can you tell by referring to this Respondent's Exhibit Number 43?

A. They were not shown on Exhibit 43.

2108 Q. Now, I show you this price list again, Commission's Exhibit Number 85, for the week ending September 8, 1917. Are any shoulders quoted there?

A. They are not quoted here. What we had we tried to consign to a nearer by market than to send them to Atlanta.

Atlanta is not a good shoulder market, especially the cure we had.

Q. Why is it not a good shoulder market?

A. It is more of a fresh pork market.

Q. You mean it is not a market where shoulders could be sold—

A. Yes; shoulders could be sold to much better advantage to Alabama Commissaries and smaller towns.

Q. How is Atlanta as a ham market?

A. Very good, for a new cured product.

Q. Now is there anything else that was long at the time you took charge?

A. No, those were the principal items on which we experienced the most grief.

Q. I show you Commission's Exhibit 94. Do you recall writing that letter?

A. Yes, I remember that now.

Q. Those are your initials by which that letter is signed, are they not, Mr. Rogers?

A. That is mine.

Q. And you placed them on there yourself?

2109 A. Yes sir.

Q. Now I show you Commission's Exhibit Number 122 and will ask you if you remember receiving from J. W. Clarke Company a letter of which that is a copy, dated September 12th?

A. I don't remember receiving this letter. There is nothing in it of a definite nature that would help me to recall this particular letter at this time.

Q. Now I call your attention to Commission's Exhibit 87 and ask you if you recognize that?

A. I recognize my signature. I don't remember the particular letter.

Q. You do not recall the writing of the letter? And you observe there that that refers to an order of September 12th, the same day which this letter, Commission's Exhibit 122, was written by J. W. Clarke Company, do you not?

A. Yes, that could be true, but still I don't remember receiving this letter, because there is nothing of a specific nature in it.

Q. You don't mean that the original of that letter was not received by you?

A. No, I do not.

Q. Now, I call your attention again to Commission's Ex-

hibit Number 122, particularly to the third paragraph, and will ask you if you recall seeing that third paragraph?

A. The third paragraph in this exhibit does not help
2110 me to remember at this late date whether I actually saw this letter or not, because there is only a general statement in here; it is just a general statement.

Q. Do you remember receiving any such report from Mr. Miller as is contained in the third paragraph of that letter?

A. No, his account sales would show whether he was getting better results or not, which was being handled by the accounting department.

Q. No, but do you remember his ever stating to you that he was getting better prices for hams?

A. No, I do not, except what is shown in this letter. This letter would mean nothing to me. I would check his sales reports, which would show exactly what he did get; not what he said he was getting.

Q. I show you Commission's Exhibit Number 95, and ask you if you recall writing that letter, and if the signature there is yours?

A. Yes, I remember writing that letter. It was written to him on his request that I give something in writing as to what he could count on for the future connections with us, whether he could be our only outlet in Atlanta, or whether he could not; and I told him that the situation had not changed, told him over the 'phone that the situation had not changed any since I first talked with him, and that I would be glad to write him such a letter; that at the present time our
2111 nearby outlets were more than taking care of our hog receipts.

Q. You were having no trouble at all selling all you could produce?

A. Yes, we were having trouble, but you remember at that time the Government was demanding maximum loads. It meant we could not make shipment to Atlanta unless we had a full car of stuff to the roof, not minimum, but a full car of products; and we were not in position at all times to ship him a maximum car of such products as he could sell advantageously on the Atlanta markets. Now, at no time up to that time were we out of some products if we could have got it to him in a merchantable condition that he could have sold, but time and again in making shipments in all that territory our minimums hampered us; weather conditions were against us and forced us more and more to confine our

operations to our own houses who had the facilities to give our products.

Q. As a matter of fact it was the policy of the Andalusia Packing Company to handle its output through the nearby branches of Swift & Company rather than to send it over into Georgia, was it not?

A. Oh yes.

Q. And the Georgia market there was taken care of by the Moultrie plant?

A. That is correct.

2112 Q. Mr. Rogers, do you recall distinctly this conversation that you had with Mr. Thompson regarding the increase in prices of the pork products shortly after coming to Andalusia?

A. We never had any conversation that I know of as he claims in his testimony, along those lines, at all.

Q. You stated distinctly here what you did not say.

A. I didn't say anything of that nature, I know that positively.

Q. So you don't recall the conversation at all regarding which you attempted to testify in your direct examination?

A. I had no such conversation with Mr. Thompson as he has testified, because I had no such instruction from Chicago.

Q. Now, have you seen Mr. Thompson's testimony?

A. No, only what you have told me here, what has been told me here, that he testified that I said that was our arrangement of making prices.

Q. You wish it to be understood that you don't recall ever discussing the matter with Mr. Thompson then?

A. No, I don't want to have it understood that way. Mr. Thompson and I naturally had more or less conversation on the selling of products each week that he was in; but at no time did I tell him that that was our basis of pricing, because it was not. Our basing at Andalusia was always all we could get for the stuff, everything considered, which was inferior to our standard grades.

2113 Q. Do you wish it to appear from your testimony that you do not recall having any conversation with Mr. Thompson in which he complained about the increase of prices on the pork products which he was selling?

A. No, only so far as the definite statement as to how we arrived at our methods of arriving at those prices; I object

to that part of it, because that was not our method of making our prices.

Q. But you do not attempt to say here that Mr. Thompson never complained about the increasing of prices on pork products?

A. I never yet had a salesman under me who did not kick that our price was too high; and he was not different in that respect than any other salesman I have come in contact with.

Q. Are you talking about Andalusia Packing Company salesmen now, or all salesmen?

A. All salesmen; naturally, the cheaper they can have the product to sell, the easier it is for them.

Q. So you and Mr. Thompson did have conversations regarding the increasing of prices on pork products?

A. Specifically, yes, "Will the prices be higher next week or lower"; the usual conversation that you are bound to have in directing your salesmen how to conduct or how to go about making sales for the company; what you are long on, what your idea of the price is, what their idea of the price for the product is, what the market is, and what they find are the conditions; we have had those kind of conversations
2114 every week he was there and I was there, and we would naturally talk over conditions. He was my representative in the field; we would naturally talk over prices and what our prices would be for the following week, and that on some product what was not as good as the other we would be willing to take less for; but at no time was a basis of how those prices were arrived at ever explained to Mr. Thompson because we had no such basis.

Q. And did he at these conversations complain that the prices of the Andalusia Packing Company had been advanced since Swift & Company took charge of it; that the prices he was now required to get were higher than he could get?

A. I can't say as to that specifically.

Q. Now did you ever, while in charge of the Andalusia Packing Company receive instructions from Chicago as to prices that were to be charged for any of the products?

A. At no time.

Q. Never?

A. Not as the Andalusia Packing Company. We were absolutely there to use our best judgment.

Q. You never received any suggested list, or list of suggested prices, or differential lists?

A. Oh yes, we received lists.

Q. What were those lists?

A. Whatever the general wholesale lists were to the
2115 branch houses in our territory.

Q. Yes, but what were the character of those lists?

A. Covering all different kinds of pork products.

Q. And suggesting prices?

A. No suggestions of prices. They were just mailed to us for any information or guidance we could get out of that as to what hard products were selling for in our nearby branches. We received no information from Chicago other than—

Q. Did you receive any lists suggesting property differentials in prices between the Western pork and the Southern Pork?

A. Yes, we received a differential at our request to let us know what a differential they had on dry salt meats, and we would conduct tests to see whether our differentials were right or not.

Q. And you received these differential lists from time to time?

A. Yes, we received those differential lists from time to time.

Q. You commenced receiving them practically from the time you went to Andalusia, did you not, Mr. Rogers?

A. I don't remember the date. I know we asked for the experience of the men who had made a life study of the shrinks of meat, and we asked for them to give us any differentials or tests that would aid us in determining the right
values to put on soft and oily products as we made our
2116 tests; we had absolutely nothing to go by when we got in the country.

Q. And you received quotations from day to day on the prices of Western pork?

A. We would receive changes—mailed changes as to the changing of the market the country over.

Q. I show you here Commission's Exhibit 196 which is one of those differential lists for Moultrie. Is that practically the same character as the differential lists received by you at Andalusia?

A. I would say yes, offhand.

Q. To the best of your recollection it is the same?

A. Yes.

Q. Now this is headed "Moultrie Weekly Differential

Letter Number 25." Did you receive those differential lists weekly?

A. I don't remember if we did, or not, at this time.

Q. What is your best recollection on that?

A. I don't know. I would say no, because they didn't change.

Q. Do you recall whether they were headed at the top, "Weekly Differential Letters"?

A. No, I don't remember that.

Q. But you do remember that you did receive them from time to time?

A. I wouldn't want to say yes to that definitely; if we did, we ought to be able to produce one of them. I
2117 don't remember whether we got our information in that shape or not. We asked for any help that men of experience in making tests would give us as to what a reasonable shrink would be to guide us in making the correct differential over the cured product when you processed it there in the smoke-house or otherwise. Whether or not that was our basis I am not in position to say now, from memory.

Q. This differential list not only covers cured meats but fresh meats as well.

A. Yes, to the Swift Branch house.

Q. That is, it shows the spread in price?

A. To a Swift Branch house.

Q. To anybody?

A. No, to a Swift Branch house.

Q. In selling to others than a Swift Branch house, did you follow these instructions received from these differential letters?

A. As far as I can remember we followed the market in actual competition. That product there went to a branch who can sell in direct competition. We who sell through our outlets had to meet competition. If we found by tests that that differential was correct, or nearly correct, on the soft and oily products we had to contend with, we, of course, tried to maintain that differential.

Q. Then, did you try to sell the Swift Branch houses
2118 for less than you sold to anybody else, on an average?

A. I wouldn't say that now. I don't know.

Q. The only guide you had to sell Swift Branch houses was the price of Western pork less the spread shown on these weekly differential letters?

A. This is our actual checking up of their market and

their sales tickets. There was hardly a week went by—there was no week went by, in fact, that someone from our organization did not visit a branch house town and make sure of what they were getting for our products. We were absolutely merchants in Andalusia, and to sell our products at the best possible advantage, either to a house or otherwise; if we could, preferably otherwise; but we had to fall back on the branches to help us out.

Q. Then do you wish it to appear on the record that the branches were handling your surplus? I understood awhile ago that it was the brokers who handled the surplus.

A. When I first came to Andalusia, our outlets were the three salesmen in question, plus the brokers, with possibly an occasional sale to packers. That system gradually changed. It changed from sales direct to a broker, to more sales to a branch house. It was brought about primarily because our branches could give us better facilities all the way through in handling, and as our branches got to the point where they could handle a larger volume they naturally took more
2119 of it and less went to the brokers.

Q. And less went to the broker because you refused to furnish the broker with the product, is that right?

A. I didn't give the broker preference over a branch, no, because it was understood with the—

Q. But you did give the branch preference over the broker?

A. Certainly, because we could get it to the branch in a much better condition, and it would again reach the trade in a better condition.

Q. Now, who sold the most products? Your brokers, or these three salesmen?

A. In tonnage?

Q. Yes; tonnage, dollars, or any other way you want to describe it?

A. Well, tonnage is the only basis we can consider progress on. You mean at the time we took the place over, or any specific time?

Q. At the time you took the place over?

A. I would say, the brokers, without the record before me.

Q. Now, you took over the place, and the brokers were gradually eliminated? The salesmen you kept along for a time, did you not?

A. We kept the salesmen and increased the sales force.

Q. Yes; and eventually it came to be so that the salesmen

at the Andalusia plant, or, working from Andalusia,
2120 and your branch houses handled practically your entire output?

A. That is correct. That did not occur, however, until after it had ceased to be the Andalusia Packing Company.

Q. Well, the brokers ceased to represent you long before that?

A. Well, the shipments to them gradually began to decrease, yes.

Q. In fact you told them at the very start, as you testified here, that you were going to cut them off?

A. That is right.

Q. Now, after all these goods were being handled by the branch houses and by the salesmen operating from Andalusia, which represented the larger output, the sales by the salesmen operating from Andalusia, or the sales through the branch houses?

Mr. Horton: What time do you mean, Mr. Taylor?

Mr. Taylor: Oh, any time after the brokers stopped selling, say, January 1st, 1918?

A. Without any definite record to go by I would say, the branch houses, because the branch houses were a highly organized outlet which could be utilized for increased volume immediately, whereas our selilng force had to be developed step by step.

By Mr. Taylor: Q. Now, take it six months later, what would you say?

2121 A. I would say the same condition still existed. However, six months later, the sales force would always get the preference over a branch house in the filling of orders. We were then coming, six months later, into a period of decreased hog receipts, which means less of some items, and then if it was needed by our sales force they would get it over a branch house.

Q. Now, go down to January 1st, 1919, what would you say?

A. Well, I would not know. However, that is the heighth of the producing season. I would imagine that the tonnage to the branch houses would be greater than to the sales force, because they have a bigger fresh pork outlet.

Mr. Taylor: That is all.

Mr. Horton: That is all, Mr. Rogers.

Examiner Sadler: The witness will be excused. Adjourn until ten o'clock tomorrow morning.

(Whereupon at 5:00 P. M. the hearing was adjourned until 10:00 A. M. of the following day, Sept. 10, 1921.)

2122 Docket 453

Chicago, September 10, 1921

Met pursuant to adjournment 10:00 A. M.

Before:

C. T. Sadler, Examiner.

Present:

Parties as before.

Examiner Sadler: The hearing will come to order.

GEORGE D. ROGERS resumed the stand and further testified as follows:

Redirect Examination by Mr. Horton.

Q. Mr. Rogers, when you were on the stand yesterday Mr. Taylor or Mr. Haycraft showed you Commission's Exhibit No. 195 which is a weekly differential letter, and I believe you stated in your testimony that you didn't know when that letter was first sent from Chicago to the Andalusia plant. Is that correct?

A. That is correct.

Q. Now, since that time have you found any records or anything which will refresh your recollection upon that?

A. Yes, I have been through the file downstairs and not only found the dates that they were sent to us but a letter

2123 I wrote Andalusia as a result of a meeting that we held in this office on May 5, 1919. In order to merchandise our product from Andalusia through our branch houses we had to have some definite understanding with these branches. Their market was the price list that they got from the north on northern products and in order to sell our product to them and have some basis so that they would know what they were going to be invoiced or what it would cost them, we told them that we would sell it at so much under same averages and kinds of northern products. Now, we made those differentials up at Andalusia and sent copies, and it was not until I had gotten into Chicago in May, 1919 that I was taken to task for not keeping Chicago at that time better posted on what we were doing; and I wrote this letter as a result of that meeting, wherein I have asked our people there to start immediately arranging to send copies—

Mr. Taylor: Mr. Examiner, I submit it is not proper to have the witness read from the letter. If he wants the letter in evidence let him offer it and then it can be passed upon in the proper way.

Examiner Sadler: I think that is the best way, if you want to introduce it.

Mr. Horton: We have not offered to introduce the letter, and the witness is not reading from the letter.

The Witness: It is just a copy that I had written to refresh my memory.

2124 Mr. Taylor: Well, I object to stating the substance of the letter. It is wholly incompetent, and counsel knows it is. If he wants to get the letter in evidence, let him offer it in evidence.

Mr. Horton: Please continue your statement, Mr. Rogers.

Mr. Taylor: Mr. Examiner, I desire a ruling as to whether or not this witness shall be permitted to state either the substance or the contents of this letter.

Examiner Sadler: I think the letter should be introduced in evidence if you want it in the record.

Mr. Horton: Very well, we will introduce the letter in evidence. We formally offer the letter. Is the letter received, Mr. Examiner?

Examiner Sadler: I am just waiting for his objection, if any.

Mr. Taylor: I object to it as wholly immaterial.

Examiner Sadler: The objection will be noted and the letter will be received and marked "Respondent's Exhibit 44."

Mr. Horton: Let's get this clear, please. Counsel insists that I offer the letter in evidence and then he objects to it.

Mr. Taylor: Certainly, that is my right; I have the right to object to it. That is the reason I have the right to insist that you offer it in evidence, so that I may object to it, instead of letting the witness sit there and give secondary

2125 evidence of its contents.

Mr. Horton: You either want it in or not; if you want it in you ought to let it in without objection; and if you don't want it in you ought not insist on my offering it.

Examiner Sadler: It will be marked Respondent's Exhibit Number 44.

(The paper was received in evidence and marked Respondent's Exhibit No. 44.)

By Mr. Horton: Q. Now, Mr. Rogers, what does the "GDR" at the bottom of this letter mean?

A. In our system, the first initials at the bottom indicate the man that dictated the letter.

Q. And do you remember writing this letter?

A. Absolutely.

Q. And prior to this time had you sent the Chicago Office a copy of what may be termed your differential prices?

A. No, we had not; they were not on our mailing list; only the branches in our territory to whom we were selling the products.

Q. When was the first weekly differential letter that was made in Chicago made, that is, on what day?

A. The first one that we got from Chicago replacing the one that we sent out, was the letter they sent out on August 4, 1919, Numbered 31, which corresponds to the weeks of the year.

2126 Q. It was sent out on August 4th, the 31st week of the year?

A. Yes, and it replaced our more or less dim, indistinct differential letter that we had been sending from Andalusia.

Q. Prior to this time you fixed your differential yourself at Andalusia?

A. Under Northern products.

Q. But you fixed the differential yourself?

A. We fixed it ourself down there.

Mr. Horton: I offer in evidence the Andalusia weekly Differential Letter, Number 31, dated Chicago, August 4, 1919, which the witness testifies is the first letter sent out from Chicago.

The Witness: And mailed direct to the houses as well as to us in place of our letter.

Mr. Taylor: No objection to it.

Examiner Sadler: The letter will be received and marked "Respondent's Exhibit Number 45."

(The paper was received in evidence and marked "Respondent's Exhibit No. 45.)

Mr. Horton: Cross examine.

Recross Examination by Mr. Taylor.

Q. Mr. Rogers, Respondent's Exhibit 44 here starts off by saying "Notice you do not seem to have our weekly concession letter, S. and W. Sales Department." What is "concession"?

2127 A. The concession in that referred to there is what is termed here differential or the price under similar northern products that we are willing to take for Andalusia soft and oily products.

Q. Do you always mean the same when you use "concession" as you do when you say "differential"?

A. In this case, yes.

Q. Do you always mean the same when you say "concession" as you do when you say "differential"?

A. No, there is a difference between a concession and a differential.

Q. Well, what is that difference?

A. A differential is to cover in some cases like the expense in converting a partially cured product to a finished cured product. That is a differential, and it fluctuates much less than a concession. A concession is an amount given under the market price for a product, which may be given for various reasons,—long on products that should be moved, changing of shipments, readjustment of stocks, or any other causes that would warrant the selling and taking less for their products than the supposed market; it might be in the competitive selling.

Q. Now, is the differential which you have described, the same differential that is intended to be covered by this Respondent's Exhibit 45?

2128 A. Exhibit 45 can either be called a differential or concession. It is not a fixed differential that would run indefinitely. It was changed weekly and was changed to show and post the branch houses the concession or differential, under, that we would take for our product from Andalusia, under what they could buy similar kinds and averages of hard products from the North. Exhibit 45 is nothing more or less than a price list on the Andalusia products, and due to changing markets from day to day was issued in this form.

Q. That is, it is a scale of spread, is it not, between the Western pork and the Andalusia pork?

A. That is correct, yes.

Q. Now, would you call that strictly a differential or a concession?

A. I would call it a concession.

Q. Well, what was it called generally? This is termed here a "differential"?

A. It was generally called a concession, but it is referred to as a differential or a concession because it does not give

a specific price that the product would bring, and is the reason why I think the word "differential" is now used for it. It is an amount under some other price.

Q. In other words, to determine the cost per pound to a Swift branch house of any particular output from the Andalusia plant it was necessary for you first to ascertain
2129 the price on the Western products of similar character and then deduct the amount of spread set forth on this sheet, Respondent's Exhibit 45, which is here termed a differential sheet?

A. That is the way the branch house would arrive at its cost.

Q. Well, how would the Andalusia plant arrive at it?

A. We arrived at our basis for the making of those differentials on what the market was for our products.

Q. And how did you find out what the market was for your products?

A. In actual competition in our territory, both by our salesmen's sales and jobbing sales. Those differentials or concessions were changed from week to week by us at Andalusia, depending upon the movement of the products and our stock.

Q. Now, had similar differential letters to this been issued before this letter of August 4th, 1919?

A. Yes sir.

Q. And where were they issued?

A. From Andalusia, as a stencil.

Q. And who made up this letter which was issued from Chicago?

A. Respondent's Exhibit 45 is a replacement of our letter.

Q. Yes, and who made it up?

A. We made it up.

Q. What do you mean by "we"? Swift & Company?

A. Swift & Company, Andalusia, made the differ-
2130 ential letter, even after this was issued by Chicago in the printed form. We never relinquished the rights to change the differentials as our markets changed.

Q. You mean to say you made that up after this was printed here in Chicago?

A. No sir, it was made up before and they printed it.

Q. Do you desire to be understood that you prepared the copy at Andalusia, mailed it here to Chicago, and it was then printed and then sent back to you in the form in which it now appears?

A. No sir, I don't want to be so quoted. I do want it understood, however, that this differential letter is the replacement of our more or less indistinct letter that we were getting out; that at this time these differentials fluctuated less than they did when we first started them, and unless we wired in or wrote in for a change to be put in on the following week's differential letter or concession letter, they would be re-printed the same as they were the previous week.

Q. Now, take the first one that was printed at Chicago; where did they get their copy from?

A. They got it from Andalusia the week before.

Q. Then you do desire the record to be understood just as I asked you, if you desired it to be understood, when you first said no you did not?

A. Just how do you mean that?

2131 Q. I asked you if you desired to be understood that you prepared the copy of this letter, Respondent's Exhibit 45, at Andalusia, mailed it to Chicago, at Chicago it was set up and printed, and then mailed back to Andalusia in the form that it here appears; and you said no you didn't desire to be understood that way. Now will you please explain again just how you desire to be understood?

A. Yes, this differential letter still embodies our local ideas of what we think the product is worth.

Q. Then you do desire to be understood that the copy of those differential letters which were printed in Chicago and sent to Andalusia were prepared in Andalusia and forwarded to Chicago to be so printed?

A. They were, up to this time.

Q. Up to what time?

A. (Continuing) And this letter represents our ideas.

Q. Now, tell me what you mean by "up to this time"?

A. We were getting them out at Andalusia in a more or less crude form; we were not sending Chicago a copy of those; as a result of the meeting in May, Chicago asked that we mail them a copy of our differential or concession letter; and in order to get out a more legible cost to the houses in our territory they simply took over on August 4th, 1919, printing of this differential letter.

Q. And after that printed it every week and mailed

2132 it to Andalusia, is that correct?

A. Mailed it to Andalusia and our houses.

Q. And all information for that letter was forwarded from

Andalusia here to Chicago before it was so set up and printed, is that correct?

A. Not each week after August 4th.

Q. Chicago fixed the prices then without the help of Andalusia?

A. They fixed the differential letter with the suggestions of Andalusia.

Q. And the sugegstions were made after the letter was printed?

A. Always made the week before. If we made no suggestions we knew that this differential letter would come out the same. If the market had changed and warranted a change in the differential letter, we warned Chicago in time to make the changes in this differential letter.

Q. Now, where did you send these suggestions, as you term them? To what department here in Chicago?

A. They would come into the S. & W. Sales Department and the Branch House Division Department.

Q. What does S. and W. mean?

A. South and Western sales.

Q. And that is located here in Chicago?

A. Yes sir.

Q. Now, Mr. Rogers, you said this Respondent's 2133 Exhibit 45 is the first one of these weekly letters printed at Chicago. How do you know that?

A. Because it picks up where ours stop. We always numbered ours by the weeks; we started with the first week in the year.

Q. You mean to say by that that you can recall at the present time that you stopped printing these letters at Number 30 the last week in the month of July, 1919?

A. Reasonably sure, because the file in this office starts with that one, and ours ends.

Q. Have you seen the letter Number 30, for the last week in July, 1919?

A. No, I have not.

Q. Now, just which ones, if any, of those weekly letters that you say were issued from Andalusia have you seen?

A. Number 16, for instance, in casually going through the file.

Q. You are quite certain you have seen Number 16?

A. Yes sir.

Q. And is that the last one that you have seen?

A. That is the only one—

Q. The "latest" one I mean by the "last one"?

A. That is the only one I ran on to in hurriedly going through the files.

Q. And where did you see that letter?

A. In the files of the S. & W. Sales Department.

2134 Q. Here in Chicago?

A. Yes sir.

Q. Then you have nothing but your unaided recollection to enable you to say this is the first letter that was printed in Chicago?

A. I have the same knowledge and belief that that is the first letter, since it begins their file as I would have if I had had my file here from Andalusia showing that we ended with the 30th. Your files must begin and end somewhere, and if I had my own file here from Andalusia and I had seen letter Number 30 I couldn't say more than that I assume that that was the last of them, that that was the last one in the file.

Q. You are simply assuming that because you have not found any earlier letters in the files here, that none were printed earlier, isn't that the situation?

A. I am accepting their files on record here as being complete.

Q. Yes. And you don't know whether they are complete or not, do you?

A. Why, no one would, except the statement of the man who issued the letter.

Q. What is the date of this weekly letter Number 16; I believe you said, issued from Andalusia?

A. I couldn't say without referring to the files. It would be the sixteenth week in that year; I imagine in April

2135 some time.

Q. And that is the latest letter from Andalusia that you have been able to find?

A. No sir, that is the latest letter I saw in casually going through the files. I didn't look for the latest letter. When I found the letter I wrote in May 1919 calling attention of the office force in Andalusia that they were not mailing Chicago this letter and that I wanted them to start mailing it; it would not have been necessary to have written the letter that I wrote in May—

Q. But the last letter that you saw was in April, Number 16?

A. That is the only letter I saw in hurriedly going through

the files. I was not looking for the last letter at the time I went through that file.

Q. Now, that file is right here in the building, is it not, Mr. Rogers?

A. Yes, sir.

Q. So that you would have no difficulty in producing it and examining it?

A. Should not have.

Q. Now, I will ask you to produce the first and the last weekly concession letter from Andalusia, or differential letter, whichever you may characterize it, contained in those files?

(Whereupon the witness left the stand and returned within a few minutes.)

2136 Q. Have you examined the files, Mr. Rogers?

A. Yes, I have.

Q. Now what do you find?

A. I find in the files the first and the last letters; the first being Number 16, dated April 18, 1919, and the last one issued by Andalusia being Number 30, dated July 28th, which is then followed by printed ones from Chicago.

Q. May I see the letters?

(Witness hands documents to counsel.)

By Mr. Horton: Q. Number 16 is on the letterhead of Swift & Company, Andalusia, is it not, Mr. Rogers?

A. Yes sir; and the other was too long for a letterhead and was printed on plain paper.

Q. Both are mimeographed copies?

A. Both are mimeographed copies.

Q. And not printed. They have a printing plant in connection with the Chicago plant, have they not?

A. Yes sir.

Q. And do printing of this sort; and you didn't have such a press in Andalusia?

A. We had only limited facilities for getting price lists printed in the town itself.

2137 By Mr. Taylor: Q. Now on this sheet of April 18, 1919 the following statement appears at the top, "All items not shown S. & W. Kansas City. These concessions are not in addition to Chicago's." What is meant by that, Mr. Rogers?

A. May I have that a second please? That clause there is to establish a basis for freight, we observing the right at Andalusia, as we saw fit, due to moving our stock while they

were the youngest of either shipping local freight, straight car loads, or express, as the conditions to us seemed necessary, the branches, however, not having a vote.

Q. Not having a what?

A. Not having a vote as to the cheapest method of shipping the products, could not be penalized for shipping products by express when it would have answered their purpose just as well to have had it in carload lots under refrigeration; but due to our not having at all times sufficient products of the different assortments that a certain branch house would want or could use advantageously at the time we were producing it, we reserved the right to ship the product in any manner we figured would reach them in the best of condition, absorbing the difference. In order to make this clear we put this item here "All items not shown S. & W. Kansas City. These concessions are not in addition to Chicago's." In other words, if Chicago was giving a concession on their products it had no bearing on ours. Our idea, say, on April 18th, on fresh skin shoulders, 15 pound average, was 2
2138 cents off their full printed price list for northern shoulders, without any regard whether or not Chicago might want to give a concession of a quarter or a half.

Q. Whose full printed price list do you mean by "their"?

A. Swift & Company, Chicago price lists which govern products shipped to those branches.

Q. Did those lists never show concessions?

A. I have never seen one that did, if they do.

Q. Now, on the differential letter sheet Number 30, dated July 28th, 1919, appears the following statement at the head "Basis S. & W. branch house list F. O. B. Kansas City. Products not mentioned below will be mentioned S. & W. list F. O. B. Kansas City, except D. S. and bacon meats daily wired markets and basis circular differentials F. O. B. Chicago." What do you mean by "circular differentials F. O. B. Chicago?"

A. In order to move our dry salt and bacon meat.

By Mr. Horton: Q. What do you mean by "in order to move our"?

A. When I say "our" I mean Andalusia, as I was the manager at Andalusia and interested in their product. It was necessary in order to get volume through the houses, I mean Swift & Company houses, on this product, to handle it on the same basis that Swift & Company handled the similar product through those houses, which is a consigned basis,

which is, or was at that time a consigned basis, the
2139 branches acting in the sales of dry salt meat along similar lines of a broker. Instead of invoicing this kind of product to them on a flat price basis it was consigned to them on a daily wired basis.

By Mr. Taylor: Q. Wired from where?

A. Chicago.

By Mr. Horton: Y. You mean by that Swift & Company consigned their meats and wired the prices from Chicago?

A. Yes; in other words they made a daily price on dry salt meat. It fluctuated from day to day, and consignments or shipments were priced on that changing price, which changed every day; and in order to get our dry salt meats to move to those houses as a product which they could readily use, it was shipped with the understanding that they were to handle it on the same arrangement that they handled products from the north, which was a fixed margin.

By Mr. Taylor: Q. Is that what you mean by "circular differentials"?

A. Yes; well, you have got—

Q. And that was a circular letter issued from Chicago?

A. Daily wired market letter in connection with the basis circular differential. The basis circular differential letter is the letter that gives the spreads from the dry salts to the bacon meats. Some of the houses in the South
2140 processed these dry salt meats into bacon meats.

Q. And that circular was issued at Chicago, was it not?

A. That basis circular differential letter?

Q. Yes.

A. Yes, as Swift's letter.

Q. And how frequently was that issued?

A. To the best of my knowledge at this time, it was issued weekly.

Q. Did you get these each week at Andalusia?

A. I would say yes, after the time they started to mail us their price list.

Q. When did they start to mail you the price lists?

A. I don't know exactly.

Q. Now, just what did these price lists contain?

A. What price lists?

Q. That they mailed you, Swift & Company mailed you from Chicago? By those do you refer to the same price lists which appear here as Commission's Exhibit 197?

A. Yes, that would be a fair sample of the information which they mailed us in weekly price lists.

Q. But that is not the circular differential that you referred to at the head of this differential sheet dated July 28th, 1919?

A. No, that is an additional list, that is—

Q. And do I understand correctly that that circular
2141 differential referred only to goods which were placed with branch houses on consignment?

A. Yes, referred to dry salt meats only.

Q. And which were placed on consignment with the branch houses?

A. Yes, that is correct. That was their method of selling.

Q. And also the method of the Andalusia Company in selling?

A. No, it was not the method of the Andalusia Packing Company as such.

Q. I mean, after Swift & Company bought the stock?

A. Yes, after Swift & Company got in control, that was the method we were forced to sell; prior to that time I sold the dry salt meats where I could on a definite price, an actual price.

By Mr. Horton: Q. Prior to what time do you mean?

A. Prior to its becoming the property of Swift & Company.

Q. What date do you refer to? Do you mean prior to the time the name was changed?

A. Yes, prior to the time the name was changed. We had our dry salt meats then at a definite price, which was not satisfactory to the houses because they were handling similar products on a different basis from the North. In other words, they took our product at a set price and had to stand their shrinks and losses.

2142 Q. When was the name changed to Swift & Company? Was that when the deed and bill of sale was given from the Andalusia Packing Company?

Mr. Taylor: Mr. Examiner, I object to that; counsel is not testifying.

Examiner Sadler: I will ask that counsel not lead the witness.

Mr. Horton: Well, I am asking Mr. Rogers whether or not that was the date.

The Witness: That is the date. It is all a matter of record.

By Mr. Taylor: Q. What date was that, Mr. Rogers?

Mr. Horton: The deed and bill of sale are in evidence here, if you want to see them, Mr. Rogers.

The Witness: Yes, I would like to see them, since they ask the question.

Mr. Taylor: I just want to know what Mr. Rogers' recollection is, whether he is testifying from his own recollection or from what counsel tells him.

The Witness: Along in the Spring of 1918. I have already testified in your absence, Mr. Horton, that it was along in the Spring of 1918; which is further substantiated by the deed of transfer.

2143 By Mr. Taylor: Q. In other words, you are accepting the suggested question of counsel that it took place at the time of the transfer of the properties from the Andalusia Packing Company to Swift & Company?

A. No, I know it to be a fact, it was all embodied in the one change. You asked for a specific date; I couldn't give it to you from memory except that it was along in the Spring of 1918.

Q. In going through this file did you find the differential letters which you testified were issued from Andalusia regularly from April 18, 1919, down to the last one you produced, July 28th, 1919?

A. I didn't look for that. You asked for the first and last letter; that is all I took out of the file.

Q. And you didn't look to see what was done?

A. No, I didn't. There is evidently a lapse in between, to call forth the letter I wrote in May, which was a complaint from the Chicago people that we were not mailing them in.

Q. Now, before you began to issue this letter of April 18, 1919, where did you get your differentials from, or how did you notify the customers of your differentials?

A. What do you mean by customers?

Q. Well, I suppose, Swift & Company branch houses.

A. There is a difference between a customer and a Swift & Company Branch House, as regards that differential

2144 basis. I have already testified that we arrived at the differentials, or concessions, by what our product was bringing in our territory, through the efforts of our three salesmen or brokers; that is the way we arrived at what we could get for our product, and was the method of making our concessions or differentials to a Swift & Company house.

Q. Representatives of Swift & Company from Chicago

called at Andalusia from time to time, did they not, Mr. Rogers?

A. Yes sir.

Q. And talked to you about various features of the business at the plant there?

A. Yes sir.

Q. Among them, they talked to you about prices, did they not?

A. To the best of my knowledge and belief we had no man at Andalusia from the selling end who came through talking prices. Most of our visitors in the early stages were operating men, making changes in the physical lay-out of the plant, so as to enable us when putting down a new product to put it down in line with our usual custom and methods of processing and curing methods that had been established for years and with which I was familiar and had received my training. We were left entirely to our own judgment as regards the making of prices.

Mr. Taylor: That is all.

Mr. Horton: That is all.

Examiner Sadler: The witness will be excused.

2145 Mr. Horton: I will offer in evidence weekly concession letter Number 16, dated April 18, 1919, which the witness has testified was the first letter.

Examiner Sadler: Let the letter be received and marked "Respondent's Exhibit No. 46." Is there any objection?

Mr. Taylor: You would hear from us if there was.

(The paper was received in evidence and marked Respondent's Exhibit No. 46.)

Mr. Horton: Also, weekly differential letter Number 30, dated July 28th, 1919.

Examiner Sadler: The letter will be received and marked "Respondent's Exhibit No. 47."

(The paper was received in evidence and marked Respondent's Exhibit No. 47.)

Mr. Horton: I wish to offer in evidence directory of the Bureau of Animal Industry, for the years 1916, 1917, 1919, and 1920, respectively, issued by the Department of Agriculture and certified under its seal. The year 1918 is not included because the said Department reported that it was out of print. These exhibits are offered for the purpose of proving the slaughtering licenses were issued to certain firms and individuals in the towns of Andalusia, Alabama; Arabi, Louisiana; (a suburb of New Orleans), Augusta, Georgia;

Birmingham, Alabama; Bristol, Virginia; Chattanooga, Tenn.; Cincinnati, Ohio; Greenville, Tennessee, Hunt-
2146 ington, West Virginia; Jacksonville, Florida; Louisville, Kentucky; Macon, Georgia, Mobile, Alabama; Morristown, Tennessee; Moultrie, Georgia; Nashville, Georgia; Natchez, Mississippi; Newport, Kentucky; Norfolk, Virginia; North Augusta, South Carolina; Richmond, Virginia; Rosslyn, Virginia; Union City, Tennessee; Wilmington, North Carolina; and Shipley, Florida. Also for the purpose of showing that during the years in question slaughtering licenses were issued to various firms and individuals in the territory embraced upon the exhibit which has been marked for identification Respondent's Exhibit B-1, which I will offer next.

Mr. Taylor: I object to all of this as wholly irrelevant to the issues of the case.

Examiner Sadler: The objection will be noted. The pamphlets will be received and marked "Respondent's Exhibit 48"; and the map will be received and marked "Respondent's Exhibit Number 49."

(The papers were received in evidence and marked respondent's Exhibits Nos. 48 and 49.)

Mr. Taylor: I will state now, for the purpose of the record, subject to my objection, in order to avoid encumbering the record with these four pamphlets I am perfectly willing to admit that they do show that certain licenses, describing them as described in the pamphlets were issued to certain persons, firms or corporations, as appears on the face
2147 of the pamphlet, within the territory mentioned by Mr. Horton.

Mr. Horton: I will further state that the fact that a slaughtering license is issued by the Bureau of Animal Industry means that the said slaughtering establishment is government inspected and can ship inter-state in compliance with Federal Law. I will also state that the map, marked Respondent's Exhibit B-1 for identification has been identified by a number of witnesses, and the said witnesses have testified of their own knowledge that packing houses exist at the certain centers. For the convenience of the Commission and the Court and the attorneys I have had placed a red dot at the points where the witnesses have identified, and Respondent's Exhibit 48 shows slaughtering licenses for packing houses.

Mr. Taylor: I object to it as immaterial.

Examiner Sadler: The objection will be noted.

Mr. Horton: I wish to offer in evidence the Birmingham ledger of the Andalusia Packing Company, which has previously been identified as Exhibit A-17 for identification. In doing so I want it understood that I am offering that part of the ledger which is included under the index, A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z.

Mr. Taylor: Do you wish to exclude from your offer any Birmingham sales that may be shown in any other part of the ledger offered in evidence?

Mr. Horton: No, I wish to include all Birmingham
2148 sales, but there are a number of sheets in the back of the ledger which refer to other accounts, such as insurance, discounts, feed, freight and drayage, fuel and light, First National Bank, which are obviously not a part of Mr. Allen's business.

Mr. Taylor: But if any of those accounts do show sales in Birmingham of Andalusia Packing Company's products, you do not wish to exclude them?

Mr. Horton: No; the point I am trying to get at is to show Mr. Allen's customers, who they were, and the size and volume of the business.

Examiner Sadler: Any objections?

Mr. Taylor: No objections.

Examiner Sadler: The book will be received and marked "Respondent's Exhibit 50."

(The book was received in evidence and marked Respondent's Exhibit No. 50.)

Mr. Horton: I wish to offer in evidence a book which has been identified as Commission's Exhibit A-19, and Respondent's Exhibit B-19, which is the consignment book of the Andalusia Packing Company; also a book which has been identified as B-21, which is a continuation of the consignment book of the Andalusia Packing Company.

Examiner Sadler: Any objection?

Mr. Haycraft: I call your attention, Mr. Horton, to the fact that in the exhibit for identification A-19 and B-19,
2149 the first consignment report of sales to E. P. Allen Company is Lot Number 5, dated October 12, 1916, and the last report is Lot No. 65, May 16th, 1917. Do I understand that for the purpose of your offer, that this exhibit contains all of the consignment reports between those two dates, of goods shipped to Mr. Allen?

Mr. Horton: The books are offered for what they do contain.

Mr. Haycraft: Well, the point I am trying to make is do you contend that they are complete records?

Mr. Horton: I intend to offer the book for what it does contain; for what the testimony of the witnesses who have identified the books show as to what it is.

Mr. Haycraft: I also call your attention to the fact that the same exhibit contains consignment report of J. W. Clarke Company of Lot No. 1 to Lot No. 55, Lot No. 1 being August 16th, 1916, and Lot No. 55 being May 14th, 1917; and ask you the same question?

Mr. Horton: The same answer.

Mr. Haycraft: Then I understand, Mr. Horton, in offering both these exhibits it is not your intention to convey the idea that they contain the consignment reports of all the sales made by the J. W. Clarke Company and the E. P. Allen Company for the Andalusia Packing Company?

Mr. Horton: To answer that question intelligently,
2150 Mr. Haycraft, I would have to review the testimony of the witnesses who have identified the book; and inasmuch as it is some little time since they testified, their testimony is not clear in my recollection now, as to the details of it. Therefore, the books are offered for what they do contain, of course, to be taken in conjunction with the testimony of the witnesses who have identified them.

Mr. Taylor: If these records are offered simply for the purpose of showing the shipments contained, there is no objection to them. If they are offered for the purpose of showing that those shipments and no other shipments on consignment were made to the respective parties, then they are objected to, in so far as they attempt to draw the negative conclusion that no further shipments may have been made.

Examiner Sadler: The objections will be noted and the books will be received and marked "Respondent's Exhibits 51 and 52, respectively."

(The books were received in evidence and marked Respondent's Exhibits 51 and 52.)

Mr. Horton: I also wish to offer in evidence book marked B-20 for identification, a continuation of the consignment sales to E. P. Allen.

Examiner Sadler: Any objection?

Mr. Taylor: My attitude as to this offer is the same
2151 as to the two preceding offers. I have no objection to

it if it is offered for the purpose of showing the existence of the contents, but I do object to it if it is contended that it is offered as evidence of the non-existence of matter not contained therein.

Examiner Sadler: The objection will be noted and the book will be received and marked "Respondent's Exhibit 53."

(The book was received in evidence and marked Respondent's Exhibit No. 53.)

Mr. Horton: I also wish to offer in evidence the ledgers of the Andalusia Packing Company, which were previously identified as exhibits for identifications, A-15, A-16 and A-18.

Mr. Taylor: Mr. Examiner, I have no objection to these ledgers if offered as evidence of the facts which they actually contain. I do object to them, however, if negative conclusions are sought to be proven by the exhibits.

Examiner Sadler: The objection will be noted and the books will be received and marked "Respondent's Exhibits 54, 55, and 56, respectively."

(The books were received in evidence and marked Respondent's Exhibits 54, 55 and 56.)

Examiner Sadler: Adjourn to ten o'clock A. M. Monday.

(Whereupon, at 12:15 P. M., the hearing was adjourned to Monday, September 12, 1921, at 10 A. M.)

2152 Docket 453

Chicago, September 12, 1921.

Met pursuant to adjournment. 10 A. M.

Before:

C. T. Sadler, Examiner.

Present: Parties as before.

Examiner Sadler: The hearing will come to order.

EDWARD A. FOX was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Horton.

Q. State your name, please?
A. Edward A. Fox.
Q. Where do you live, Mr. Fox?

A. Chicago.
Q. What is your business?
A. I am an Assistant Department Manager for Swift & Company.
Q. What department?
A. S. & W. Sales Department.
Q. And how long have you been in that department?
A. About twelve years.
Q. And does that department have charge of issuing the printed price lists gotten out by Swift & Company and
2153 the weekly differential letters, for the two southern plants at Moultrie and Andalusia?
A. Yes sir.
Q. You have charge of that matter?
A. Yes sir.
Q. Now, when did you issue the first—after the Moultrie plant was acquired by Swift & Company how were the prices fixed for that plant? Where were they fixed?
Mr. Taylor: Mr. Examiner, I object; no proper foundation has been laid for that question.
Examiner Sadler: The objection will be noted.
By Mr. Horton: Q. (Continuing) At Chicago or Moultrie?
A. At Moultrie.
Q. And did they issue their own price lists and their differential letters down there?
A. They did, at the beginning.
Q. And then did that situation change later?
A. Yes sir.
Q. When?
A. According to our records, we began issuing the differential sheet from Chicago on August 4, 1919.
Q. Is that the time that they were put out under printed forms?
A. They were then put out under a printed form.
2154 Q. And prior to that it was on a mimeographed form?
A. Yes sir.
Q. Now after you started issuing the printed form, how were any changes in price handled? Where did the suggestion first come from originally?
A. From Moultrie.
Q. And how would that be handled?

A. They would wire their suggestions in here and we would have the lists printed according to their suggestions.

Q. I show you two weekly differential letters, Number 37; one is for Andalusia, dated Chicago, September 12, 1921, and one is for Moultrie dated the same date. Were these the letters that were used in your regular business for those dates?

A. Those are our regular differential letters.

Mr. Horton: I wish to offer those in evidence.

Mr. Taylor: I object to these sheets as irrelevant and immaterial to the issues of the case.

Examiner Sadler: The objection will be noted. The sheets will be received and marked "Respondent's Exhibits 57 and 58" respectively.

(The papers were received in evidence and marked Respondent's Exhibits No. 57 and 58.)

Mr. Taylor: Are you through with your direct examination, Mr. Horton?

Mr. Horton: Yes.

Mr. Taylor: No cross.

2155 Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Horton: I desire to offer in evidence a pamphlet issued by the United States Department of Agriculture, Bureau of Animal Industry, compiled by John Roberts of the Editorial Office of the said Department, entitled "Trend of Meat Production, Consumption, and Foreign Trade in the United States, 1907 to 1919." I understand that counsel for the Commission has no objection because the said document is not certified under the seal of the Department, and no objection to the further fact that a copy is offered in lieu of the original; and that the document offered may be received with the same faith and credit as though it were issued under the seal of the department. It is understood, of course, that the document offered is a true and correct copy of the original, and if it is found that it is not, why, such corrections as may be necessary may be made to conform with the original.

Mr. Taylor: There are no objections to it on the ground mentioned by counsel for the respondent, it being understood that the document is to be received subject to correction, if any. I do object, however, to it on the ground that it is irrelevant to the issues of the case, and on the further ground it is incompetent, the information being collected from vari-

ous sources and through various channels regarding
2156 which no opportunity is given to cross-examine.

Examiner Sadler: The objections will be noted and the pamphlet will be received and marked "Respondent's Exhibit 59."

(The paper was received in evidence and marked Respondent's Exhibit 59.)

Mr. Horton: We close our case, Mr. Examiner.

Mr. Taylor: Mr. Examiner, I desire to offer a few exhibits in this case which have been referred to from time to time heretofore. First I wish to call attention to the fact that on page 99 of the record I offered in evidence a paper which was marked "Commission's Exhibit 57," being the first two pages of O. C. E. Mathies' report and at that time reserved the right to offer the subsequent pages of that report, should I so elect. I now wish to offer the remaining pages of that report, those pages to be added to the first two pages as originally offered, and the report as a whole to bear the same exhibit number which it already bears, namely, 57; and in making this offer I do it with the understanding that a copy of the additional pages may be substituted for the original, as was done in the case of the first two pages.

Examiner Sadler: Any objection?

Mr. Horton: I have no objection to this report as a report, but this report was made by Mr. Mathies hur-
2157 riedly, and without a great deal of time to go into detail, and the facts shown here may be correct as such; and if it later develops that it is called to our attention that any of them are incorrect, I would like to reserve the opportunity to explain them and get down to what the correct facts are. There is quite a broad field covered by the report and I do not feel that it is desirable at this time to take the proposition up and analyze it, but to wait for the development of points as they may be applicable to the case.

Examiner Sadler: The objection will be noted and the report will be received and attached to Commission's Exhibit No. 57.

Mr. Taylor: That is, the report as a whole will appear as Commission's Exhibit No. 57. Mr. Examiner, I also wish to offer in evidence at this time the ledgers of M. M. Stanaland, which have already been marked for identification as Exhibits A-26 and A-27.

Examiner Sadler: Any objection?

Mr. Horton: No objection.

Examiner Sadler: The ledgers will be received and marked "Commission's Exhibits 201 and 202" respectively.

(The books were received in evidence and marked Commission's Exhibits 201 and 202.)

Mr. Taylor: Mr. Examiner, I wish to offer in evidence here a duplicate of the lease executed by Swift &
2158 Company to the Moultrie Stock Yards, under date of August 2nd, 1920. I offer this duplicate lease without first having it identified, as I understand it is admitted by Mr. Horton that it is a true copy of the original lease which was executed between these parties.

Mr. Horton: I not only admit it, but it is correct that it is a true and correct copy of the original lease.

Examiner Sadler: Any objection?

Mr. Horton: No objection.

Examiner Sadler: The lease will be received and marked "Commission's Exhibit 203."

(The paper was received in evidence and marked Commission's Exhibit No. 203.)

Examiner Sadler: Adjourn to 1:00 P. M.

(Whereupon, at 12 M., a recess was taken until 1.00 P. M.)

After Recess.

JOHN M. CHAPLIN was thereupon recalled as a witness, having been previously duly sworn, and testified as follows:

Direct Examination by Mr. Haycraft.

Q. Mr. Chaplin, are you the same Mr. Chaplin who has testified heretofore in this proceedings?

A. Yes sir.

2159 Q. And you were asked, were you not, on cross examination a few days ago, to prepare a statement showing the weights of meat shipped in car routes operating out of Moultrie and Andalusia plants?

A. Yes sir.

Q. That is, for the years 1919 and 1920?

A. Yes sir.

Q. Have you prepared that statement?

A. Yes sir.

Q. And is this the statement that you have before you?

A. It is.

Q. Has this been checked so that you are satisfied it is a correct statement?

A. Yes sir.

Q. What did you check it against, or compare it with?

A. It is made from a statement kept in our car route department, which was prepared from reports received from these two plants.

Q. That is, these reports were regular reports that you received?

A. Yes sir, regular weekly reports.

Q. That is, the plant was required to furnish your department weekly a report of the volume of sales of the various kinds of meats?

A. Yes, sir.

2160 Q. Now, in the first column I notice on this statement on the lefthand margin the months and the year, and in the second column you have "Fresh meats"; what fresh meat does that include?

A. Beef, mutton, veal, and pork.

Q. And then you have figures opposite the various months, which I take it indicate the volume of sales of that particular kind of meat during that month?

A. That is correct.

Q. In the third column you have "Cured Meat", what does that include?

A. Sweet pickle pork, dry salt pork, smoked pork, and perhaps a little cured and smoked beef.

Q. A percentage of smoked beef, would be very small?

A. It would be very small.

Q. In the fourth column you have lard compound and oils. What do you mean by "oils"?

A. Cooking oil.

Q. Lard compound, is that also lard substitutes?

A. Yes sir.

Mr. Horton: Pardon me. Isn't that lard comma compound and oils?

The Witness: That is correct; that is both the hog lard and the compound lard.

2161 By Mr. Haycraft: Q. Yes. There should be a comma after the word "lard"?

A. Yes.

Q. Now, would this compound be manufactured at Moultrie, or would that be something that came in from the out-

side, the lard compound?

A. My impression is that it was shipped in from the outside.

Q. Now, in the next column are the "Miscellaneous." What would be included in that?

A. It would be sausage, boiled ham, casings, soap, canned goods, and all the other miscellaneous products that we handle, butter, eggs, and cheese.

Q. All the other Swift & Company products that were sold through the car routes operating out of Andalusia and Moultrie?

A. That is correct.

Q. Now then under the fresh meat could you estimate at all the proportion of pork or beef? That is to say, would the volume be more pork than beef, or more beef than pork?

A. I don't know. I have no means of knowing that.

Mr. Haycraft: I wish t ooffer this exhibit in evidence.

Examiner Sadler: Any objection?

Mr. Horton: No objection to the exhibits as an exhibit.

Examiner Sadler: The statement will be received and marked "Commission's Exhibit 204."

2162 (The paper was received in evidence and marked Commission's Exhibit 204.)

By Mr. Haycraft: Q. Do I understand you correctly, Mr. Chaplin, that this statement includes only the products that were sold from what is known as peddler cars operated under the jurisdiction of the car route department out of Andalusia and Moultrie?

A. Yes sir.

Q. And would not include sales of similar products made direct from the plants to branch houses of Swift & Company?

A. No, it does not include any shipments to branch houses.

Q. I notice that the last entry you have here for Andalusia is marked "March, 1921." Is that the last shipment made by the Andalusia plant?

A. Yes, that is correct. We went out of the car route business at Andalusia.

Mr. Haycraft: That is all.

Examiner Sadler: Any cross-examination, Mr. Horton?

Cross-Examination by Mr. Horton.

Q. Mr. Chaplin, do you know whether or not these two plants did a considerable volume of sausage business?

A. Yes.

Q. And do you know what kind of meats went into the sausage, that is to say, whether it was the meat slaugh-
2163 tered at Andalusia and Moultrie plants, or whether part of it was part hard northern meats?

A. A considerable part of practically all sausage had to be northern hard meat; possibly fifty per cent.

Q. Fifty per cent. on the average, you think it could be?

A. Yes, sometimes it would be more than that; sometimes less.

Q. And when meat was shipped down there for sausage how was it classified there, fresh meat or miscellaneous?

A. Sausage would be in miscellaneous.

Q. Yes; but where would the meat be that was shipped down to make the sausage?

A. Any meat that we shipped down for sausage, if it was fresh meat, would be classed as fresh meat; it would be received at the plant as so much fresh meat.

Q. And when it was shipped out, it would be what?

A. It would be shipped out as sausage; it would be classed in this car route statement as "miscellaneous."

Q. That is, on the corresponding statement showing what Andalusia shipped out or Moultrie, as the case may be?

A. Yes.

Q. Now isn't it also possible or probable that meat could be shipped down there as fresh meat and cured down there and shipped out as cured meat from those plants?

A. Yes, that is quite possible.

2164 Mr. Horton: That is all.

Mr. Haycraft: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Horton: At the request of counsel for the Commission relative to the status of the Georgia corporation, the Moultrie Packing Company, and the Alabama corporation, the Andalusia Packing Company, I will say that no formal action has ever been taken by Swift & Company towards the dissolution of either corporation. However, under date of November 12, 1919, the Secretary of State for the State of Georgia writes: "Replying to your letter relative to the Moultrie Packing Company having retired from business in 1918, beg to advise that I have taken their name from our register. In regard to the surrendering the charter of this company, the code of Georgia, 1910, will give you full information as to how this should be done. Yours truly, S. G. Mc-

Lendon, Secretary of State." The matter apparently rests there. Nothing further has been done. With regard to the Alabama Corporation, on July 21, 1920, in response to a circular form requesting a return on capital stock tax, received from the Collector of Internal Revenue at Birmingham, Alabama, the said Collector was informed that the company had retired from business, sold and disposed of all its property and went into liquidation March 31, 1918, and
2165 has not since carried on or done business within the meaning of the regulations approved July 21, 1920, relating to the capital stock tax. It may be that these corporations are dissolved by operation of law. On that point I have no definite information.

Mr. Taylor: No reply has been received from the Secretary of State of Alabama to the report which you last referred to, in regard to the Andalusia Packing Company?

Mr. Horton: The correspondence with the Alabama official was with the Collector of Internal Revenue; not with the Secretary of State; and no reply has been received from him.

Mr. Taylor: That is a Federal Collector of internal revenue, or a State collector?

Mr. Horton: State collector.

Mr. Taylor: There has been no correspondence with the Secretary of State in regard to the Andalusia Packing Company?

Mr. Horton: Not that I find in the files.

Mr. Taylor: And no steps have been taken by Swift & Company to dissolve either corporation legally?

Mr. Horton: That is my understanding.

J. R. KITCH was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Taylor.

Q. State your name, please?

2166 A. No sir, I do not.

Q. You are dating your observation back to the time you were in Andalusia?

A. Yes sir.

Q. And that is eighteen months or two years ago?

A. Yes sir.

Mr. Horton: That is all.

Mr. Taylor: That is all.

Examiner Sadler: The witness will be excused.

(Witness excused.)

Mr. Taylor: Mr. Examiner, this completes the Commission's rebuttal.

Examiner Sadler: I understand the case is closed, then, for both sides?

Mr. Taylor: Yes.

Examiner Sadler: Under the Commission's rule, which was amended on May 20th, it provides that within ten days after receipt of the proposed findings of fact and proposed order, the attorneys for the respondent and for the Commission shall file in writing their exceptions, if any, to such proposed findings and order, and said exceptions shall specify the particular part or parts of the proposed findings of fact or proposed order to which exception is made, and said exceptions shall include any additional findings and any change in or addition to, proposed order which either
2167 party may think proper. Citations to the record shall be made in support of such exceptions.

Regarding time for filing briefs, the attorneys for the Commission will have thirty days after the receipt of the proposed findings of fact and proposed order, and the attorneys for the Respondent will have twenty days after the receipt of the brief prepared by the attorneys for the Commission in which to file their brief. The briefs, in each instance, shall be filed with the Secretary of the Federal Trade Commission.

The hearing is closed.

(Whereupon, at 5:00 P. M., the hearing in the above entitled matter was closed.)

2168 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION: ss.

Federal Trade Commission
vs.
Swift & Company.
} Docket No. 453.

I, Otis B. Johnson, Secretary of the Federal Trade Commission, do hereby certify that hereunto annexed are true and correct copies of exhibits to testimony in the above en-

titled case as stipulated by and between attorneys for the respective parties, except those being forwarded as physical exhibits.

That these exhibits are certified to the United States Circuit Court of Appeals for the Seventh Circuit, by reason of the filing in the said Court of a petition for review of the Order entered by the said Federal Trade Commission under date of August 3, 1922.

OTIS B. JOHNSON.

OTIS B. JOHNSON,
Secretary, Federal Trade Commission.

(Seal)

Endorsed: Filed Sep 24 1923 Edward M. Holloway, Clerk.

2169 COMMISSION'S EXHIBITS.

Federal Trade Commission

vs.

Swift & Company.

sion's bit No. 1. 2170 COMM. EX. NO. 1.

Federal Trade Commission
v.
Swift & Co.
} Docket No. 453

Exhibit No. 1—Feb. 9/21.
Witness: Smithwick.

Chicago, May 19, 1917.

Mr. Edward F. Swift.
Second Floor.

My trip to Moultrie was a disappointment as far as the cattle prospects are concerned; and the same is true of everything that I have seen in the South about cattle.

They only have one bed, but claim they can kill 40 cattle a day, or 80 in two days. If they can do this, it will crowd their coolers awfully. But it takes about 80 cattle of the kind that they have got to make 20,000 pounds of beef.

Here is about the way they handle the cattle transactions

for Swift & Company: Brooks says—"I will show you three carloads to be unloaded shortly. Shipper says will weigh over 600# and wants 7¼c for them." I saw the cattle which weighed 475# empty off cars. They were thin steers and bulls mixed. He tried to get a lower price than 7¼c. He tried to throw out some at a separate price, but shipper refused—threatening to load them up for Jacksonville, so he accepted them at the price. I don't doubt that they proved quite dear, but the experience will be worth something.

I am anxious to find out how the Canners from New Orleans proved, but I have made up my mind that cattle killing in the South is not as rosy as it is painted, which is partially proved from the fact that Mr. Lavery has had a free lance for a good many months to have them bought where he could and get them killed wherever he could, and while he has done some of it he has come to a standstill and quit.

The canning cattle are bringing pretty close to St. Louis prices.

It would be a good scheme to buy and kill a better quality of cattle in the South and sell them locally, if they could be secured, but they cannot now—but we could work into this gradually. We would need to put a young man there under Mr. Brooks who might look after the cattle buying
2171 and beef selling; he might also work into sheep and lambs and possibly assist on the hog buying if he had the right ability.

The Pork handling of the Moultrie business seems highly flattering to me.

LOUIS F. SWIFT.

Dict. LFS
BHS
Copies—CHS GFS, Jr WBT HCC

nission's hibit No. 2. 2172

COMM. EX. 2.

Copies—EHS GFS, Jr WBT LAC

Docket 453
Exhibit 2
Feb. 9/21
Witness: Smithwick

Chicago, May 19, 1917.

Private:
Mr. Edward F. Swift,
Second Floor.

Mr. Vereen, who is president of the Moultrie Banking Company, the oldest and best bank in Moultrie, is also president of the packinghouse. He is also a large owner in a cotton oil mill, a cotton cloth mill and a mattress factory—alll at Moultrie. He is a very nice gentleman.

About Brooks (Superintendent): He worked in the Sausage Department of Swift & Company, Chicago a number of years and is a pretty shifty kind of fellow—something like Harding. Think that he has had more to do than he could do justice to. He says that he wants to remain with us.

There are a good many other packing propositions in the South that are taking form; viz.—

Tifton. 30 miles from Moultrie. New plant has foundations just started. Understand from Brooks same size as Moultrie.

Mr. Tift, the head man of Tifton, is pushing this the same as Mr. Vereen did at Moultrie. No doubt the plant will be offered to us and others later on.

Waycross. A small plant now in operation, owned by the Ice Company and Electric Light Company. Fairly successful.

Macon: A brewer there, since prohibition, has turned his brewery over to a packinghouse proposition. May be ready for operation in six months or a year.

Atlanta: Our former manager, Mr. Whyte, has a small packing company here. Successful.

There is a big stockyards here, adjoining Whyte, but they are dead: they cannot establish a market, and Whyte has to buy in the country.

Chattanooga: Mr. Whyte is also a director and part owner with Mr. Allison of a small packing company here.

2173 Nashville and Louisville: I had a good look at the country from the train around Nashville, and what I already know about Louisville makes me think that these two cities are separate propositions.

While the Moultrie neighborhood is another proposition, a place like Montgomery or Atlanta are in between and really don't amount to anything except the local feature.

LOUIS F. SWIFT

Dict. LFS
BHS

2174 Docket 453—Exhibit 3
Feb. 9/21
Witness: Smithwick.

Commis... Exhibit... 3 and...

Chicago, May 19, 1917.

Mr. Edward F. Swift,
Second Floor.

The Moultrie Packing Company killed only 73 cattle in April.

If we put a young man there that understands the beef business and he uses ingenuity in getting the right kind of cattle and shipping them promptly, I suppose we could do 750 a month.

They killed 7,000 hogs in April. Have a capacity of 12,000 to 15,000 if properly handled.

LOUIS F. SWIFT

Dict. LFS
BHS
Copies CHS GFS, Jr WBT HCC

2175 Docket 453
Exhibit No. 4
Feb. 9/21
Witness: Smithwick

Chicago, May 19, 1917.

Mr. Edward F. Swift,
Second Floor.

I visited the Moultrie plant, and the only thing that I could find that might be against the plant, was the sewage which is taken about 3,000 feet to a creek, and there has been some complaint from the residents.

Brooks says this complaint is all satisfied now by an antiseptic tank that cost $190.00
Should want an authority from Superintendent's Department to check this; and the same party to lay out a plan for

changing their single cattle beds to double cattle beds; and also to lay out a plan for tallow tanks as they have none now; also for a general increase in cattle and hog coolers and curing.

LOUIS F. SWIFT

Dict. LFS
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Copies—CHS GFS, Jr WBT HCC

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bits Nos.
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2176 Docket 453
Ex. No. 5
Feb. 9/21
Witness: Smithwick.

Chicago, May 19, 1917.

Mr. Edward F. Swift,
Second Floor.

If we do anything with the Moultrie proposition, I should want it understood that we continue to run under the same name for a few months anyhow—until we got acquainted with it; and that absolutely no changes are to be made in their manner of making products—but continue in the same channels for at least one month until we know more about them.

My reason for the above is that there are so many soft hogs that I don't want the question of Swift & Company's brands involved for the time being.

LOUIS F. SWIFT

Dict. LFS
BHS
Copies—CHS GFS, Jr WBT HCC

2177 Docket No. 453
Ex. No. 6
Feb. 9/21
Witness: Smithwick.

Swift & Company
Union Stock Yards
Chicago

November 23, 1917.

Messrs. Albert H. & Henry Veeder,
76 W. Monroe Street,
Chicago, Ill.

Gentlemen:

Purchase of Assets Moultrie Packing Co.

Swift & Company is purchasing the business of the Moul-

trie Packing Company, including land, buildings and other fixed assets, inventory of product and supplies accounts, in short, the net assets of the Moultrie Packing Company as shown on their balance sheet of November 3.

These assets will be purchased at book value.

We have not yet received Moultrie Packing Co's balance sheet of November 3, and cannot furnish you the figures for a few days. Howeevr, in view of the fact that the new stamp tax on conveyances becomes effective on December 1st, will you please arrange to have the necessary deeds, etc. prepared so that upon receipt of information from Moultrie, the transfer may be effected before December 1st.

Will you also proceed to take the necessary steps towards consummating the transfer including such directors and stockholders meetings as may be necessary.

Awaiting your reply.

Yours respectfully,

SWIFT & COMPANY
Per JGS (signed)

JGS:GG
Gen. Acctg. Dept.

2178 Docket 453
Exhibit No. 7
Feb. 9/21
Witness: Smithwick

Commission Exhibit No.

November 26, 1917.

Swift and Company
General Accounting Department.
Chicago.

Gentlemen:—

Purchase of Assets—Moultrie Packing Company.

Referring to yours of November 23, we have prepared and forwarded to Mr. F. S. Hayward for execution warranty deed and bill of sale from Moultrie Packing Company to Swift and Company (Illinois), conveying and transferring all the real estate under date of November 24, and the business and personal property of the Moultrie Packing Company to Swift and Company (Illinois) under date of November 3, 1917.

We will prepare minutes for the necessary corporate meetings to make this transfer effectual.

Yours very truly,

MW/NA

mission's xhibit No. 8.

2179 Docket 453
Ex. No. 8
Feb. 9/21
Witness: Smithwick

November 28, 1917.

Messrs. Albert H. & Henry Veeder,
76 W. Monroe Street,
Chicago, Ill.

Gentlemen:

Moultrie Packing Co.

Referring to our letter of the 23rd, and your reply of the 26th, in regard to the above, we desire to purchase the net assets of the Moultrie Packing Company as represented by their Asset and Liability statement of November 3.

The assets of the Moultrie Packing Company were as follows:

Cash	$ 24,425.63
Inventory	243,789.18
Accounts Receivable	37,279.94
Deferred Expenses	3,560.63
Fixed Investment	305,645.89
Total	614,701.27
Less Accounts Payable and accrued expenses	436,186.18
Net purchase amount	178,515.09

Confirming our telephone conversation, Swift & Company owns 956 out of a total of 966 shares of the capital stock of the Moultrie Packing Company, the other 10 shares being owned by a party by the name of Vick, and we are unable to locate these shares at this time.

We have a contract, however, with a banker in Moultrie who contracted to sell us all the stock and whereby he agrees to deliver the full number of shares, and presumably we can hold him responsible for the delivery of the 10 shares now required, at the price we contracted to pay for them. However, to avoid any possibility of objection on the part of the owner of the 10 shares in question, and of his failure to acquiesce in the sale, presume that you will arrange to have the stockholders representing the 956 shares ratify the action of the directors.

If there is any further information that you desire please let us know.

Yours respectfully,
SWIFT & COMPANY,
per JGS (sgd)

JGS:GG
Gen. Acctg. Dept.

2180 Docket 453
Ex. 9
Feb. 9/21
Witness: Smithwick.

Commission Exhibits 9 and 10

November 30, 1917.

Swift and Company,
General Accounting Dept.,
Chicago.

Moultrie Packing Company.

We have received yours of November 28, and hand you herewith copy of our letter of this date to Mr. F. S. Hayward, also copy of minutes of special meeting of the Board of Directors of the above Company, held November 3, 1917.

If these minutes are not in satisfactory form please notify us promptly and we will correct them.

Yours very truly,

MW:R

2181 Docket No. 453
Ex. No. 10
Feb. 9/21
Witness: Smithwick.

November 30, 1917.

F. S. Hayward, Secy.,
Swift and Company,
Chicago.

Dear Sir:

Moultrie Packing Company.

We herewith hand you minutes of special meeting of the Board of Directors of the above Company, held November 3, 1917.

These minutes should be signed by Mr. C. A. Peacock, Secretary of the meeting, and duly entered in the record book of the Company.

Yours very truly,

MW:R

mmission's Exhibits Nos. 1 and 12.

2182 Docket No. 453
Ex. No. 11
Fed. 9/21
Witness: Smithwick

December 18, 1917.

Mr. F. S. Hayward,
Secretary, Swift and Company,
Chicago.

Dear Sir:—

Moultrie Packing Company.

Please send us as promptly as possible a list of the stockholders of the above company, showing the number of shares held by each, and oblige

Yours very truly,

2183 Docket No. 453
Ex. 12
Feb. 9/21
Witness: Smithwick.

Swift and Company
Union Stock Yards
Chicago

F. S. Hayward
Secretary.

December 19, 1917.

Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Illinois.

Gentlemen:

As per your request of the 18th inst., below please find list of stockholders of the Moultrie Packing Company and the number of shares held by each:

T. H. Ingwersen	150 shares
F. J. King	125 "
H. C. Carr	125 "
E. B. Kixmiller	86 "
O. C. E. Matthies	5 "
W. B. Traynor	150 "
C. A. Peacock	150 "
J. J. McGuire	150 "
F. A. Luchsinger	5 "
W. C. Vereen	5 "
C. H. Wallow	5 "
W. T. Vick	10 "
	966 "

Yours truly,
F. S. Hayward (sgd)

2184 December 20, 1917. Commission Exhibit 13.
Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 13
Commission's Date Feb. 9, 1921
Witness Smithwich Reporter Brady

Mr. F. S. Hayward,
Secy., Swift and Company,
Chicago.

Dear Sir:

Moultrie Packing Company

On November 3, 1917, the Board of Directors of the above Company at a meeting held at Chicago, adopted a resolution authorizing and directing the President of the Company to sell all the business and property of the Company to Swift and Company, and this sale has since been effected.

A meeting of the stockholders should now be held at Moultrie, Georgia, for the purpose of ratifying such sale, and we have prepared and enclose herewith the following papers:

(1) Call of Special Meeting of stockholders which should be signed by all the Directors of the Company, namely,

Messrs. T. H. Ingwersen
F. J. King
H. C. Carr
E. B. Kixmiller
O. C. E. Matthies
F. A. Luchsinger
W. C. Vereen

(2) Minutes of Special Meeting of Stockholders.

(3 Proxies of

Messrs. T. H. Ingwersen
F. J. King
H. C. Carr
E. B. Kixmiller
O. C. E. Matthies
W. B. Traynor
C. A. Peacock
J. J. McGuire

(4) Form of Notice of Meeting.

2185 (5) Affidavit of mailing notice of meeting.

The By-laws of this Company provide that a Special Meeting of the stockholders may be called by the Board of Directors, and notice thereof shall be given in the same man-

ner as is provided with respect to Annual Meetings. The notice for an Annual Meeting is required to be given to each stockholder of record appearing on the books, by sending through the post-office to their addresses appearing on the books, at least ten days prior to the meeting, a written or printed notice signed by the Secretary stating the time and place of holding such meeting.

Please arrange to hold this meeting of the stockholders and see that notice is given as required by the by-laws.

The affidavit of mailing notices should be duly executed by the Secretary before a Notary Public and preserved with the records of the Company.

Please let us know the date this meeting is held and oblige.

Yours very truly,

MW-W

mission's
chibit No.
a.

2186 Moultrie Packing Company.

Call of Special Meeting of Stockholders.

We, the undersigned, being all the Directors of the Moultrie Packing Company, do hereby call a Special Meeting of the stockholders of said Company to be held on the day of 19 at the office of the Company in the City of Moultrie and State of Georgia, at 10 o'clock in the forenoon, for the purpose of ratifying the sale of the property and business of this Company to Swift and Company and for the transaction of any other business that may come before said meeting.

Dated December 21, 1917.

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Federal Trade Commission
vs.

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Docket No. 453 Exhibit No. 13 a
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady
MW-L

2187 Federal Trade Commission

vs.

Docket No. 453 Exhibit No. 13 b
Commissions Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

Commission Exhibit 13b.

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS OF MOULTRIE PACKING COMPANY HELD

A Special Meeting of the stockholders of the Moultrie Packing Company was held at the office of the Company in the City of Moultrie, State of Georgia, December , 1917, at 10 o'clock in the forenoon pursuant to call by the Board of Directors and notice to each stockholder as required by the by-laws.

The following stockholders were present:

In Person:	No of Shares
F. A. Luschinger	5
W. C. Vereen	5
C. H. Wallow	5
By Proxy:	
T. H. Ingwersen	150
F. J. King	125
H. C. Carr	125
E. B. Kixmiller	86
O. C. E. Matthies	5
W. B. Traynor	150
C. A. Peacock	150
J. J. McGuire	150
	956

representing a majority of the stock of the Company.

Mr. was chosen to preside as Chairman of the meeting, and Mr. C. H. Wallow, Secretary of the Company, acted as Secretary of the meeting. The Chairman announced that this meeting was called by the Board of Directors for the purpose of ratifying the sale of the property and business of this Company to Swift and Company. The Secretary thereupon read the call, which is as follows:

"Moultrie Packing Company

Call of Special Meeting of Stockholders

We, the undersigned, being all the Directors of the Moul-

trie Packing Company, do hereby call a Special Meeting of the stockholders of said Company to be held on the day of 19..... at the office of the Company in the City of Moultrie and State of Georgia, at 10 o'clock in the forenoon, for the purpose of ratifying the sale of the property and business of this Company to Swift and Company and for the transaction of any other business that may come before said meeting.

2188 Dated December 21, 1917."

The following preamble and resolutions were offered, and after full consideration and discussion on motion duly seconded, were unanimously adopted:

Whereas, The Board of Directors of this Company at a meeting held at the office of the Company in the City of Chicago, State of Illinois, November 3, 1917, duly adopted a resolution authorizing and directing the President of this Company to sell to Swift and Company all the business and property of every description and wheresoever situated belonging to this Company at the book value thereof as shown by the books of the Company at the close of business on November 3, 1917, and the assumption by said Swift and Company of all the debts, contracts, obligations and liabilities of this Company at the close of business on said date, and

Whereas, Pursuant to said authority the President of this Company has sold all the business and property of this Company to Swift and Company for the consideration aforesaid; and

Whereas, Said price is a full and adequate consideration for the same,

Now, Therefore, It Is Hereby

Resolved, That the action of the Board of Directors and the President of the Company in disposing of the property and business of this Company to said Swift and Company as aforesaid, be and the same is hereby in all respects ratified, approved and confirmed, and

Resolved, That this Company be wound up, liquidated and its net assets be distributed among the stockholders in proportion to their holdings, and

Resolved, That the Board of Directors of this Company be and they are hereby authorized and directed to take any action that may be necessary to carry into effect these resolutions.

There being no further business presented, the meeting on motion duly made and seconded, adjourned.

.....
Secretary of the Meeting

.....
Chairman of the Meeting

2189 Moultrie Packing Company

Comm... Exhib... 13c ...

Notice of Special Meeting of Stockholders

A Special Meeting of the stockholders of the Moultrie Packing Company will be held at the office of the Company in the City of Moultrie, State of Georgia, on the day of 19 at ten o'clock in forenoon, for the purpose of voting on the question of ratifying the sale of the property and business of this Company to Swift and Company, and for the transaction of any other business that may come before the meeting.

C. H. WALLOW
Secretary Moultrie Packing Company

By Order of the
Board of Directors.

Federal Trade Commission
vs.

.....

Docket No. 453 Exhibit No. 13 C
Commission's Date Feb. 9, 1921
Witness Smithwich Reporter Brady

2190 State of Georgia
Colquitt County

C. H. WALLOW, being duly sworn deposes and says that he is the Secretary of the Moultrie Packing Company, a corporation of the State of Georgia; that on the day of 19 , he caused a notice of the Special Meeting of the stockholders of said Company to be held at Moultrie, Georgia, on the day of 19 , a copy of which is hereto annexed, to be mailed in a sealed wrapper, postage prepaid, addressed to each stockholder of record of said Company to his address as the same appears on the books of the Company.

.....

Subscribed and Sworn to before me this day of 19 .

Notary Public
Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 13 D
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

January 10, 1918.

mission's hibits Nos. and 15.

2191

Mr. F. S. Hayward,
Secretary Swift and Company,
Chicago.

Dear Sir:

Moultrie Packing Company

Referring to ours of December 20th, kindly let us know whether the special meeting of the stockholders of the above company has been held and the date thereof, and oblige

Sincerely yours,

Federal Trade Commission
vs.

MW-O

Docket No. 453 Exhibit No. 14
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

2192

Swift and Company
Union Stock Yards
Chicago

January 11, 1918.

F. S. Hayward
Secretary.

Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 15
Commission's Date Feb. 9, 1921
Witness Smithwich Reporter Brady

Messrs. Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Illinois.

Gentlemen:—

Moultrie Packing Company

In reply to your letter of the 10th will say that special

meeting of the stockholders of the above company was duly held January 5, 1918, and we have minutes and all other papers signed and in our possession.

Yours truly,

F. S. HAYWARD

P. S.—We have not yet received copy of warranty deed and general bill of sale asked for in our letter of December 18th.

2193 January 14, 1918. Commiss Exhibit 16 and

Mr. F. S. Hayward,
Secretary, Swift and Company,
Chicago.

Dear Sir:

Moultrie Packing Company

As requested in yours of January 11th, we hand you herewith copy of Warranty Deed and General Bill of Sale from Moultrie Packing Company to Swift and Company.

Sincerely yours,

Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 16
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

MW-O

2194

Copy

Chicago, Ill., June 28, 1917.

Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 17
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

Mr. T. E. Henderson,
First National Bank of Andalusia,
Andalusia, Alabama.

Dear Sir:

Referring to telegrams exchanged in reference to the purchase of the capital stock of the Andalusia Packing Company, which resulted in your wiring on June 26 as follows:

"H. C. Carr,
U. S. Yards, Ill.

I confirm the sale of all the shares of the capital stock of

the Andalusia Packing Company to your company at seventy dollars per share subject to conditions stated in option and I anticipate no trouble in this respect but will take three or four days to get it together.

T. E. HENDERSON."

In completing this transaction, would like to have you and Mr. Darling furnish the following guarantees, which presume you will be perfectly willing to do:

(a) Guarantee that balance sheet of May 1, 1917 is correct, and all liabilities as stated.

(b) Guarantee all outstanding accounts.

(c) Guarantee that the inventory represents sound value.

Also in completing the transaction, our attorneys advise that they will want the following documents:

1. Contract of purchase and sale;

2. Certified copy of the charter of the corporation;

3. The minute book of the corporation containing its by-laws. If the by-laws are not contained in the minute book, then a copy of the by-laws certified by the Secretary of the company;

4. Certificate of the Secretary of State of Alabama,
2195 or of the Probate Judge of the County wherein the corporation is located, whichever is the proper officer, that the corporation has paid its annual franchise taxes and is in good standing;

5. Certificates of stock representing all of the outstanding stock of the corporation, endorsed in blank, and if endorsed by an administrator, executor, trustee or other fiduciary, we will have to have with such certificates, in the case of executors, administrators or guardians, letters certifying to their appointment; in the case of executors, certified copy of will; in the case of trustees, the trust instrument or a certified copy of the will under which the trustee is acting. We will also require the original stub book against which to check the outstanding certificates; Guarantee that certificates sent are all that are outstanding;

6. We should have the resignations, to take effect when accepted by the Board of Directors, of each director and officer, the understanding being that the directors and officers will continue to act until their successors are elected and qualify;

7. We will have to have the abstracts or search the titles, showing titles to date free from material defects, including

in such abstracts, search for judgments, tax liens and lis pendens. We should also have the opinion of a local attorney as to the titles. This could be waived if there are no local questions arising upon an examination of the abstracts in our office, but if such an opinion does not accompany the original papers, there will be delay until we can examine the abstract and then ask for the opinion. Time will be saved by having the opinion sent on in the first place;

8. We shall have to have the tax and assessment receipts for the tax year 1916.

9. We assume that the title to all the properties owned or leased is in the name of the corporation. If titles are held in any other name, we should have assignments or deeds conveying the properties either to the corporation or to our nominee.

Probably in order to save time, after you have everything in shape, it would be advisable to have our attorney proceed to Andalusia and go over the documents so that if
2196 any minor defects are to be corrected the matter can be taken up immediately and the defect quickly cured.

Suggest you advise by letter or by wire, whichever you prefer, if you will comply with the above and when you will be ready.

Yours truly,

H. C. CARR

HCC AG
Copy LFS EFS GFS LAC HV JMC

2197

Copy

Commission's Exhibit 18.

Andalusia Packing Company

Copies Sent
LFS,
EFS,
CHS,
GFS,
LAC,
JMC,
HV.

July 2, 1917.

Federal Trade Commission
vs.

Docket No. 453 Exhibit No. 18
Commission's Date Feb. 9, 1921.
Witness Smithwich Reporter Brady

H. C. Carr,
Union Stock Yards,
Chicago, Ill.

Dear Sir:

We have your favor of the 28th ult. contents of which have

been carefully noted and in reply thereto beg to advise you as follows:

(a) We will be willing to attach to the contract of purchase and sale a list of all the obligations of the Andalusia Packing Company representing borrowed moneys and guarantee that this list covers all the liabilities of said Company for moneys borrowed, reserving to ourselves the right to make any corrections in said list of obligations that we might have found from May 1st to date the contract of purchase and sale is signed.

As regards to liabilities other than those representing moneys borrowed—At the time that this inventory was made, specific instructions were given the office to enter each and every invoice for material, supplies or otherwise, covering any articles or thing that had been received at the Plant and that had been included in the inventory, and, of course, I presume that this was done but should it develop that one or more invoices should have been overlooked and if we can show that the Company had value received for said invoices, we will not be held responsible for the omission of said entry. Of course, I do not know of any that were not properly entered at that time and the manager and
2198 bookkeeper in the office advise me that they know of none that were not properly entered at the time. If, however, a claim should be made or account presented for which the Company did not have value received, or is otherwise fraudulent or forged, we will assume full responsibility for this.

(b). We will not guarantee that the outstanding accounts due this Company will be paid.

Your representative, Mr. Mattheis, had full access to the books while here and we gave him all the information possible to give any one relative to their genuineness as well as the general standing and promptness of each payor.

(c). The inventory, as of May 1st, was taken under the instructions and supervision of our manager, Mr. Conner, for the information of the Directors of this Company only and not with any other view in mind except the sale of the products in the regular channels of trade.

You are perfectly welcome to interrogate Mr. Conner or any other employes of the Company as to the correctness of the inventory when taken and I understand that your Mr. Matthies did this while here: should you have any doubt, whatever, of the soundness of our present stock, and invi-

tation is extended to you to make any examination thereof that you deem necessary.

In this connection, I wish to state that you are probably aware of the fact that Mr. Darling and I own only a small per cent of the stock and do not feel called upon to make any personal guarantee for possibly one hundred and fifty other stockholders more especially in view of the fact that you have had complete and full access to everything that we own and no question was ever raised, heretofore, as to any guarantees and in the absence of any requests in this respect prior to the exchange of telegrams in which a price for the stock was agreed upon, we proceeded upon the theory and
2199 understanding that by reason of your previous examinations and investigations that you were satisfied with regard to all these points named.

1. We have no objection to the contract of purchase and sale.

2. We will furnish certified copy of the charter of the corporation.

3. We will furnish the minute book of the corporation in which is contained the by-laws.

4. We will furnish certificate of the Probate Judge of this county, who is the proper officer to give such certificate, that the corporation has paid the annual franchise taxes and is in good standing.

5. Your request in this respect will be complied with.

6. Your request in this respect will be complied with.

7. We will furnish abstract of title to the land owned by the corporation and if it develops there are any material defects, we will comply with your wishes in having the opinino of a local attorney accompany the abstract.

8. We will furnish you a copy of the tax assessment list for the year of 1916.

9. Your assumption that the title to all the property owned by the corporation is in its own name correct.—is

We have no leased property of any kind, neither is the title to any of the property owned, in the name of any one else.

In this connection I wish to state that we will require a guarantee from Swift & Company that they will assume and pay all of the obligations representing money borrowed as shown by a list of such obligations attached to and made a part of the purchase and sale and on which a number of our

Directors are endorsers, guaranteeing to these endorsers that these notes will be paid when due.

2200 We would like, also, that the contract provide that it is the expectation and intention of the purchasers to continue the operation of this Plant as it has been heretofore —there will be no objection to your making it as large as you want to—this is in line with the representation made to Mr. Darling and myself, in person, while you were here.

When these matters are disposed of as above outlined, you may have your attorney proceed to Andalusia for a complete investigation of each and every detail as I feel confident that we will have everything arranged for him to examine by the time he gets here, say Thursday or Friday of this week.

Yours very truly,
(Signed) T. E. HENDERSON.

TEH:B

nission's
hibit No.

2201 Swift & Company
Union Stock Yards
Chicago

Docket No. 453
Exhibit No. 19
Feb. 9, 1921
Witness—Smithwick

July 6, 1917

Mr. Robert F. Fisher,
c/o Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Ill.

Dear Sir:

Understand you expect to be in Andalusia, Ala., on Monday, July 9. Having made two trips there recently thought I would advise you that the best railroad schedule for you to make use of is—

Leave Chicago 9:45 P. M. via Ill. Central on what they call the "Seminole Limited"

Arrive Birmingham 4:45 P. M. next day

Leave Birmingham 7:20 P. M. same evening via L. & N.

Arrive Montgomery 10 P. M. Stay there over night.

Leave Montgomery 7:20 A. M. following morning for Andalusia via Georgiana where you change cars.

Arrive Andalusia 10.36 A. M. second day after leaving Chicago.

The hotel at Montgomery is the "Gay-Teaugue Hotel," and the hotel at Andalusia is called the "Dixie."

Also for your information would advise that I visited

Andalusia with F. A. Hunter of St. Louis about six weeks ago, and then a few weeks later without Mr. Hunter.

We had our conferences with Mr. T. E. Henderson, who is president and active man of the First National Bank; also president and active manager of the Andalusia Packing Company, and with Mr. A. C. Darling, secretary and treasurer of the Andalusia Packing Company,—Mr. Darling also being interested in the wholesale jobbing business, feed mill, lumber business, and various other enterprises.

Both Messrs. Henderson and Darling seem to be very well known throughout that country and have considerable
2202 following. Think they are also interested in a bank at Troy, Alabama, which is a nearby town.

It will probably work out when the packing plant is taken over that we will want one or both of these gentlemen either as an officer or as director, just for the sake of local prestige, at least for a while, although our directors have not definitely decided on this policy and am just giving it to you as the probable line-up.

Also we expect to send some one to Andalusia in the course of a few days who will be manager or acting manager of the plant, or something like that, until the organization is perfected.

Yours truly,
(Signed) H. C. CARR

2203 Chicago, Illinois,
July 9, 1917.

Commission Exhibit 20.

Mr. T. E. Henderson, President,
First National Bank of Andalusia,
Andalusia, Alabama.

Dear Sir:

Referring to your letter of July 2:

We will arrange to have our Mr. Mattheis go to Andalusia again to check up outstanding accounts.

Will have a representative check the meats in stock as to condition.

In regard to any liabilities not shown on your statement this, of course, is something that cannot be checked up and presume you and your associates would have no objection to giving a guarantee that there are no liabilities in excess of $250.00 not shown on your statement.

Swift & Company cannot undertake to guarantee obligations representing borrowed money as requested by you. It

goes without saying that if Swift & Company are buying all the shares, they naturally assume the obligations as shown on your statement.

Having purchased the plant for the purpose of operating it as a packing plant, it is their intention to do so.

Awaiting your reply in reference to guarantee on liabilities in excess of $250.00 not shown on statement.

Yours truly,

(Signed) H. C. CARR

HCC:AG
Copy L. F. S.
E. F. S.
H. V.
J. M. C.

Docket No. 453
Exhibit No. 20
Feb. 9, 1921
Witness—Smithwick

mission's hibits Nos. and 22.

2204

Docket No. 453 Exhibit No. 21
Witness-Smithwick Feb. 9, 1921

Western Union Telegram

July 11, 11 A. M., 1917
Andalusia, Ala.

Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Ill.

Recommend twenty six hundred sixty five shares issued be transferred to Chicago stockholders account bylaws and state laws Wire name number shares Agree issue new stock here and attach with all papers to draft on Chicago bank Record title imperfect account fires limitation title good leaving at two oclock Notify home

R. E. FISHER

2205

Docket No. 453 Exhibit No 22
Feb. 9, 1921 Wit. Smithwick
July 14, 1917

Mr. Louis F. Swift,
Swift & Company,
Chicago.

Dear Sir:

Andalusia Packing Company

Examination of the charter, by-laws and minute book of Andalusia Packing Company, an Alabama corporation, proved that the corporation was legally organized with an authorized capital of $250,000., of which $135,250. has been issued, a total of 2,665 shares of the par value of $50. each. Certain of the provisions of the by-laws will not suit our re-

quirements and should be amended at an early date. Stockholders, and not directors, have power to amend by-laws. The by-laws provide for not less than 15 nor more than 20 directors; 17 were elected at the last annual meeting in October, 1916. The State law requires that all directors shall be stockholders. The by-laws further provide that all officers shall be stockholders. Stockholders' meetings may be held without the State of Alabama, provided the written consent of all Alabama stockholders is filed with the Secretary of State. I, therefore, suggested in my telegram of the 11th instant that all stock be issued to stockholders without the State of Alabama, who may then amend the by-laws, after which stock could be issued to any of the present directors of the Andalusia Packing Company to qualify them to again act as directors, if you so desire.

Resignations of all directors except on and all officers were in Mr. Henderson's hands. No doubt he has now received the remaining one. The certificates representing all outstanding shares of stock, duly endorsed, are in Mr. Henderson's possession. He, as President, and Mr. Darling, as Secretary, are willing to issue new shares of stock, representing all of the outstanding shares, to such persons as are nominated by you, and attach them with all other papers, including the old certificates, to a draft on a Chicago bank.

Mr. Henderson's attorney has drafted an agreement wherein Messrs. Henderson and Darling guarantee that the list attached thereto representing money borrowed contains all items for money borrowed as shown by the books of the corporation on May 1, 1917, and subsequent thereto. Some
2206 of the notes representing money borrowed bear the individual endorsement of Messrs. Henderson and Darling and some of the other directors of the Andalusia Packing Company, and for that reason these gentlemen insist that Swift and Company agree to pay or cause to be paid, when due, outstanding obligations for money borrowed as shown on the list referred to and attached to the agreement, and which Messrs. Henderson and Darling guarantee are all of the outstanding obligations for money borrowed. The agreement above referred to covers this situation.

The records of Covington County, Alabama, have twice been destroyed by fire and, therefore, practically none of the real estate titles in that county are perfect. However, the Packing Company has a good limitation title to the property and its possession will never be disturbed. We have

an abstract of title prepared by the attorney for the Packing Company, Mr. A. L. Rankin. It is not customary to submit abstracts in that county. The attorney for a purchaser examines the records and makes his report therefrom. In this case we received the abstract insisted upon. All real, personal, franchise and license taxes have been paid. I have the original charter, by-laws, minute book, and a survey of the property in my possession.

Mr. Mattheis arrived but a few minutes before my departure and no question had then arisen as to inventory values at the present time. When this question has been disposed of the transaction will be in shape for early closing.

Sincerely yours,

REF/NA

missions' xhibit No. 23. 2207

Docket No. 453 Exhibit No. 23
Feb. 9, 1921 Wit. Smithwick

Copy

Chicago, Ill., July 20, 1917.

Copy G. F. S. Jr.
L. A. C.
H. V.
R. C. M.

Mr. W. B. Traynor,

Memorandum in regard to Andalusia Packing Company, Trade

Guarantees requested in our letter of June 28 to Mr. T. E. Henderson, together with his reply of July 2, as follows:

(a) Guarantee that balance sheet of May 1, 1917, is correct, and all liabilities as stated.

Ans. We will be willing to attach to the contract of purchase and sale a list of all the obligations of the Andalusia Packing Company representing borrowed moneys and guarantee that this list covers all the liabilities of said company for moneys borrowed, reserving to ourselves the right to make any corrections in said list of obligations that we might have found from May 1 to date the contract of purchase and sale is signed.

As regards to liabilities other than those representing moneys borrowed—At the time that this inventory was made specific instructions were given the office to enter each and every invoice for material, supplied or otherwise, covering any articles or thing that had been received at the Plant and that had been included in the inventory, and, of course, I presume

that this was done but should it develop that one or more invoices should have been overlooked and if we can show that the Company had value received for said invoices, we will not be held responsible for the omission of said entry. Of course, I do not know of any that were not properly entered at that time and the manager and bookkeeper in the office advise me that they know of none that were not properly entered at the time.

2208 If, however, a claim should be made or account presented for which the Company did not have value received, or is otherwise fraudulent or forged, we will assume full responsibility for this.

(b) Guarantee all outstanding accounts.

Ans. We will not guarantee that the outstanding accounts due this company will be paid.

Your representative, Mr. Mattheis, had full access to the books while here and we gave him all the information possible to give any one relative to their genuineness as well as the general standing and promptness of each payor.

(c) Guarantee that the inventory represents sound value.

Ans. The inventory, as of May 1st, was taken under the instructions and supervision of our manager, Mr. Connor, for the information of the Directors of this Company only and not with any other view in mind except the sale of the products in the regular channels of trade. You are perfectly welcome to interrogate Mr. Connor or any of the other employes of the Company as to the correctness of the inventory when taken and I understand that your Mr. Matthies did this while here; should you have any doubt, whatever, of the soundness of our present stock, an invitation is extended to you to make any examination thereof that you deem necessary."

Mr. Henderson also states:

"In this connection, I wish to state that you are probably aware of the fact that Mr. Darling and I own only a small per cent of the stock and do not feel called upon to make any personal guarantee for possibly one hundred and fifty other stockholders more especially in view of the fact that you have had complete and full access to everything that we own and no question was ever raised, heretofore, as to any guarantees and in the absence of any requests in this respect prior to the exchange of telegrams in which a price for the stock was agreed upon, we proceeded upon the theory and understanding that by reason of your previous examinations and in-

vestigations that you were satisfied with regard to all these points named."

2209 Also in completing the transaction, our attorneys advise that they will want the following documents:

1. Contract of purchase and sale.

Ans. We have no objection to the contract of purchase and sale.

2. Certified copy of the charter of the corporation.

Ans. We will furnish certified copy of the charter of the corporation.

3. The minute book of the corporation containing its by-laws. If the by-laws are not contained in the minute book, then a copy of the by-laws certified by the Secretary of the Company.

Ans. We will furnish the minute book of the corporation in which is contained the by-laws.

4. Certificate of the Secretary of State of Alabama, or of the Probate Judge of the County wherein the corporation is located, whichever is the proper officer, that the corporation has paid its annual franchise taxes and is in good standing.

Ans. We will furnish certificate of the Probate Judge of this county, who is the proper official to give such certificate, that the corporation has paid the annual franchise taxes and is in good standing.

2210 5. Certificates of stock representing all of the outstanding stock of the corporation, endorsed in black, and if endorsed by an administrator, executor, trustee or other fiduciary, we will have to have with such certificates, in the case of executors, administrators or guardians, letters certifying to their appointment; in the case of executors, certified copy of will; in the case of trustees, the trust instrument or a certified copy of the will under which the trustee is acting. We will also require the original stub book against which to check the outstanding certificates; Guarantee that certificates sent are all that are outstanding.

Ans. Your request in this respect will be complied with.

6. We should have the resignations, to take effect when accepted by the Board of Directors, of each director and officer, the understanding being that the directors and officers will continue to act until their successors are elected and qualified.

Ans. Your request in this respect will be complied with.

7. We will have to have the abstracts or search of titles,

showing titles to date free from material defects, including in such abstracts, search for judgments, tax liens and lis pendens. We should also have the opinion of a local attorney as to the titles. This could be waived if there are no local questions arising upon an examination of the abstracts in our office, but if such an opinion does not accompany the original papers, there will be delay until we can examine the abstract and then ask for the opinion. Time will be saved by having the opinion sent on in the first place.

Ans. We will furnish abstract of title to the land owned by the corporation and if it develops there are any material defects, we will comply with your wishes in having the opinion of a local attorney accompany the abstract.

8. We shall have to have the tax and assessment receipts for the tax year 1916.

Ans. We will furnish you a copy of the tax assessment listed for the year of 1916.

2211 9. We assume that the title to all the properties owned or leased is in the name of the corporation. If titles are held in any other name, we should have assignments or deeds conveying the properties either to the corporation or to our nominee.

Ans. Your assumption that the title to all the property owned by the corporation is in its own name is correct.

We have no leased property of any kind, neither is the title to any of the property owned, in the name of any one else.

Mr. Henderson states further:

"In this connection I wish to state that we will require a guarantee from Swift & Company that they will assume and pay all of the obligations representing money borrowed as shown by a list of such obligations attached to and made a part of the purchase and sale and on which a number of our Directors are endorsers, guaranteeing to these endorsers that these notes will be paid when due.

"We would like, also, that the contract provide that it is the expectation and intention of the purchasers to continue the operation of this Plant as it has been heretofore—there will be no objection to your making it as large as you want to—this is in line with the representation made to Mr. Darling and myself, in person, while you were here.

In answer to Mr. T. E. Henderson's letter of July 2nd, wrote him on July 9, as follows:

"We will arrange to have our Mr. Mattheis go to Andalusia again to check up outstanding accounts.

"Will have a representative check the meats in stock as to condition.

"In regard to any liabilities not shown on your statement this, of course, is something that cannot be checked up and presume you and your associates would have no objection to giving a guarantee that there are no liabilities in excess of $250.00 not shown on your statement.

"Swift & Company cannot undertake to guarantee obligations representing borrowed money as requested by
2212 you. It goes without saying that if Swift & Company are buying all the shares, they naturally assume the obligations as shown on your statement.

"Having purchased the plant for the purpose of operating it as a packing plant, it is their intention to do so."

"Awaiting your reply in reference to guarantee on liabilities in excess of $250.00 not shown on statement."

Construction Department have checked up all construction matters and are satisfied on that feature.

Superintendent's Office, in conjunction with Accounting Department have checked up meats on hand and have found condition to be satisfactory and quantities as represented.

Legal Dept. have checked up all legal matters and understands Mr. Fisher considers everything in good shape from that standpoint.

Accounting Dept. have checked up outstanding accounts. Mr. Matthies advises that same, in his opinion, are collectable, except possibly very few, not exceeding $1200.00. Understand he does not regard these as bad.

If the open matter in reference to guarantee on liabilities in excess of $250.00 not shown on statement adjusted, then think in order to do as you suggest, namely—

1. Reissue the stock to shareholders outside the State of Alabama.

2. Hold a shareholders' meeting, amending the by-laws so as to—

(a) Reduce the number of directors to say—not less than five and not more than seven.

(b) Remove the requirement that all officers shall be stockholders.

(c) Make such other changes as are necessary.

3. Elect officers and directors, retaining such of the local people as seems advisable.

2212½ Suggest retain T. E. Henderson and A. C. Darling as

officers or directors, probably both of them for directors, and one of them for vice president.

Messrs. Henderson and Darling will be at the General Office Tuesday morning, July 24, at 11 o'clock.

H. C. CARR

HCC:AG

2213 Docket No. 453 Ex. No. 24
Witness: Smithwick Feb. 9, 1921

Commissi Exhibi

July 25, 1917.

Mr. G. D. Rogers,
Andalusia Packing Company,
Andalusia, Alabama.

Dear Sir:

Yesterday 100 shares of the capital stock of the Andalusia Packing Company were transferred to you at the stockholders' meeting held pursuant to the enclosed waiver of notice, which has been signed by all the stockholders other than yourself. Please sign and return it to us at your early convenience. The stockholders, who have signed the consent, and yourself were then elected directors and a directors' meeting held. Please sign the enclosed waiver of notice and consent to the holding of the directors' meeting. You will note that this has been signed by all directors other than yourself. Please also sign and return the enclosed proxy.

We are today writing Mr. A. L. Rankin, Attorney, Andalusia, to prepare and secure the signatures of Mr. Henderson and yourself to a consent of the holding of the meetings outside of the State of Alabama, and to file the consent with the Secretary of State, sending us copies thereof.

Awaiting your early reply, we remain

Sincerely yours,

REF:O

2214 Docket No. 453 Ex. No. 25
Wit. Smithwick Feb. 9, 1921

Commissi Exhibi

August 18, 1917.

Mr. C. A. Peacock,
Union Stock Yards,
Chicago, Ill.

Dear Sir:

Andalusia Packing Company

We have written up in the enclosed record book, minutes of the special meetings of stockholders and directors of the

above company held July 24, 1917. Please have them signed by Mr. H. C. Carr who acted as Secretary of both meetings.

The waiver of notices, etc. of meeting, signed by all of the stockholders and all of the directors, and the proxy of George D. Rogers are enclosed herewith.

We also enclose written resignations of all of the officers and directors of the company. The resignation of T. E. Henderson as a director was not accepted.

Please acknowledge receipt of the enclosed.

Sincerely yours,

P. S. Through a stenographer's error the minutes of the Directors' meeting appear first.

REF:EL
Copy to W. B. T.

ion's
bit No. 26.

2215 Docket No. 453 Ex. No. 26
Wit. Smithwick Feb. 9, 1917

April 9, 1918.

Swift & Company
Union Stocks Yards
Chicago

Messrs. Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Ill.

Gentlemen:

Swift & Company have taken over from the Andalusia Packing Company the business and assets of the latter company and are assuming its obligations.

The purchase will be based on the balance sheet of March 30, 1918.

We will send you the values in a few days and in the meantime, will you please arrange for bill of sale and transfer of properties, etc.

Awaiting your reply—

Yours respectfully,

SWIFT & COMPANY,
Per—JGS

Gen. Acctg. Dept.
JGS:GG

Commission Exhibit

2216 Swift & Company
Union Stock Yards
Chicago

April 23, 1918.

Messrs. Albert H. & Henry Veeder,
76 West Monroe Street,
Chicago, Ill.

Gentlemen:—

Andalusia Packing Company

In compliance with your request of the 20th, have had executed and herewith return warranty deed and bill of sale from the above company conveying and transferring all its property, both real and personal, and business to Swift & Company of Illinois.

Will you kindly forward me copies of these documents for my files?

Yours truly,
(Signed) F. S. HAYWARD

Docket No. 453
Witness—Smithwick
Ex. No. 27
Feb. 9, 1921.

2217 Copies GFS Jr. HHS ELW ICEM HV HCC JMC

Commission Exhibit

Doc. No. 453
Ex. No. 28
12/9/21
Witness: Smithwick.

Minutes of Meeting
Directors' Room—Fourth Floor
Tuesday, May 22nd, 1917—9:15 A. M.

Present:
Messrs. Louis F. Swift
G. F. Swift, Jr.
A. B. Swift
J. M. Chaplin
H. C. Carr
F. A. Hunter
O. C. E. Mathies
F. J. King
F. A. Luchsinger
W. B. Traynor

Mr. Louis F. Swift took an option from Mr. W. C. Vereen under date of May 15th under which Mr. Vereen undertakes to deliver to Mr. F. A. Hunter.....125 shares of the stock of the Moultrie Packing Company which he owns at..... $125.00 per share and to get all the other stockholders to sign up on the same basis as soon as possible.

Option expires June 2nd, 1917.

The packing house is said to have cost $150,000.00.

According to the statement which Mr. Vereen presented to Mr. Louis F. Swift as of date April 30th, 1917—

Capital stock outstanding was.....$97,020.00

Surplus 92,170.79

Mr. C. L. Brooks is superintendent of the plant.

2218 Salary is .....$3,500.00 per annum.

It was agreed, if we bought this plant, that

1. The business would be continued along same lines as in the past.

2. We would not attempt, for the present, to maintain the Swift standards.

3. After 60 days or so, possibly less, we would ask Mr. Brooks for a fidelity bond.

4. Mr. Brooks would have to quit his outside activities if he is to run this plant.

Mr. Luchsinger was suggested as prospective Swift representative at the Moultrie Packing Company. It was agreed that for the present he would not have any title, but just keep watch of things and try to work along with Mr. Brooks.

* * *

Correspondence between this office and Mr. Vereen or Mr. Brooks is, for the present, to be handled in the name of Mr. H. J. Nelson, except that Mr. Carr may correspond in his own name with Mr. Vereen or Mr. Brooks. Letters from Chicago are to be written on plain stationery.

* * *

Messrs. Burnett and Mathies were instructed as follows:

1. Look up question of sewerage.

It is feared that the sewerage either is inadequate or would be inadequate if volume were to be doubled.

2219 2. See if can put in double cattle killing beds so as to increase capacity from 25 to 50 cattle in 10 hours.

Ascertain maximum capacity of cooler.

Report what can be done to equip the plant to kill and cool 100 cattle a day. This means 200 in the coolers.

Believe that cattle beds and cattle coolers could be enlarged over loading dock.

3. Report what is necessary to double hog killing and curing capacities.

It is understood that they kill 75,000 hogs in 10 months.

4. Investigate and report upon the proposed plan to move main line railroad tracks so as to get larger stockyards.

Think could have stockyards on the other side of main line and drive live stock on grade crossing or construct a subway or viaduct for $500.00.

5. Arrange for tallow tanks and another Prime Steam Lard tank. Have no tallow tanks now.

* * *

Mr. Mathies:

1. Audit balance sheet as of April 30th, 1917 handed to Mr. Louis F. Swift by Mr. Vereen.

2220 2. If possible, get Mr. Vereen's guaranty—

(a) That the balance sheet is correct and that all liabilities of the Company are shown thereon.

(b) That he will get all the present shareholders to sell their stock at price mentioned in the option.

3. Get full particulars regarding bond issue of $50,000 (8%) which is said to be outstanding, but which is not shown upon the balance sheet.

WM. B. TRAYNOR.

BHS
May 24th, 1917.

Form C 1891

Swift & Company

General Journal Voucher

(1) ✓	X				Comm. Ex. 29			NUMBER
Corp'n	ILL.	W. Va.	Maine	N. Y.	Limited	Incorp.	Dela.	11

DO NOT POST DEBIT AMOUNTS SHOWN BELOW				CREDIT ACCOUNT	(2) Ledger	Pr'f	AMOUNT		
DEBIT				Andalusia Packing Co.	S D& C		186	550	00
ACCOUNT	AMOUNT								
S. & Co., Ill.									
S. & Co. W. Va.									
S. & Co. Maine									
S. & Co. N. Y.									
S. & Co. Lt'd									
S. & Co. Inc.									
S. & Co. Dela.									
TOTAL									

FEDERAL TRADE COMMISSION
vs.
Docket No. 453 Exhibit No. 29
Commission's Date Feb. 9/21
Defendant's
Witness [illegible] Reporter Brady

NOTE. Use above debit column only for amount of cross-entry between jurisdiction accounts shown. Maker of journal entry should; (1), Place a ✓ above name of corporation for whose books the entry is made, and (2) write name of Ledger in column so marked, and (3) check (✓) space below if any papers are attached to journal entry.

Explanation

TOTAL

Transferring above to Stock Investment Account

DATE	Papers	Made by W.B.E.	Sundry Dep'ts O. K.	Bookkeepers O. K.	Acc't'g Dep't O. K.	Approved
7/27/17	(3)	Examiner				

Form [illegible]

Swift & Company
General Journal Voucher

(1) ✓	X			Comm. Ex. 30				NUMBER
Corp's	ILL.	W. Va.	Maine	N. Y.	Limited	Incorp.	Dela.	11

DO NOT POST CREDIT AMOUNTS SHOWN BELOW

CREDIT ACCOUNT	AMOUNT
S. & Co., Ill.	
S. & Co. W. Va.	
S. & Co. Maine	
S. & Co. N. Y.	
S. & Co. Ld'd	
S. & Co. Inc.	
S. & Co. Dela.	
TOTAL	

DEBIT ACCOUNT	(2) Ledger	Pr'f	AMOUNT
Stock Investment a/c	Private		186 550 00
	TOTAL		

FEDERAL TRADE COMMISSION
vs.
Docket No. 453 Exhibit No. 30
Commission's Date Feb 9/21
Defendant's
Witness [illegible] Reporter [illegible]

NOTE. Use above credit column only for amount of cross-entry between jurisdiction accounts shown. Maker of journal entry should: (1), Place a ✓ above name of corporation for whose books the entry is made, and (2) write name of Ledger in column so marked, and (3) check (✓) space below if any papers are attached to journal entry.

Explanation

To cover purchase of 2665 shares of Andalusia Packing Co.

DATE	Papers	Made by W.B.E.	Sundry Dep'ts O. K.	Bookkeepers O. K.	Acc'Y'g Dep't O. K.	Approved
7/27/17	(3)	Examiner				

1275

2222

Doc. No. 453
Ex. No. 31
Date 2/9/21
Witness: Smithwick.

Commission Exhibit N

Georgia, Cloquitt County.

To the Superior Court of said County:

The petition of W. H. Barber, W. C. Vereen, Frank R. Pidcock, R. M. Morrison, J. J. Battle, Geo. T. Demott, C. E. Whitfield, Jno. Clarke, Jr., Jno. T. Norman, G. W. Newton, Thos. McMillan, R. J. Corbett, Howard I. Ashburn, A. J. Green, M. E Nesmith all of said county and state, respectfully show as follows:

1. They desire for themselves, their associates and successors, to be incorporated and made a body politic under the name and style of Moultrie Packing Company for a period of twenty years.

2. The principal office of said company shall be in the county of Colquitt, said State, but petitioners desire the right to establish branch offices within this state or elsewhere, wherever in the opinion of the Directors it may be desirable.

3. The object of said corporation is pecuniary gain to its shareholders.

4. The business to be carried on by said corporation is a general packing business, dealing in live stock, meats of all kinds, cold storage of meats, vegetables and other articles; the manufacture of ice by any process whatsoever, Petitioners desire also to buy and sell lands, farms and real estate, with the right to establish stock farms and raise live stock.

2223 5. The capital stock of said corporation shall be one hundred Thousand Dollars (100,000.00) with the privilege of increasing the same to a sum not exceeding Three Hundred Thousand Dollars ($300,000.00) by a majority vote of the stockholders. Said stock shall be divided into shares of one hundred dollars ($100.00) each. Petitioners desire the right to begin business as soon as five per cent of the capital stock has been actually paid in.

6. Petitioners desire the right to sue and be sued, to plead and be impleaded, to have and use a common seal, to make all necessary by-laws and regulations, and to do all other things that may be necessary for the successful carrying on of said business, including the right to execute notes, deeds and bonds as evidence of indebtedness and to secure the same by mortgage, security deed, or otherwise. They desire for

said incorporation the power and authority to apply for and accept amendments to said charter, of either form or substance, by a vote of a majority of its stock outstanding at the time. They also ask authority for said incorporation to wind up its affairs, liquidate and discontinue its business at any time it may be determined to do so by a vote of two-thirds of its stock outstanding at the time.

They desire for the said incorporation the right of renewal when and as provided by the laws of Georgia, and that it have all such powers, privileges, rights and immunities as are incidental to like corporations or permis-
2224 sible under the laws of Georgia.

The real estate of said corporation can be transferred and sold only by a deed executed in the name of the corporation by the President or Vice-President of said company and countersigned by the Secretary or Treasurer of said company or, if not executed in this form, then to be executed in pursuance of a resolution passed by the directors of said company.

Wherefore, petitioners pray to be incorporated under the name and style aforesaid, with the powers, privileges and immunities herein set forth, and as are now, or may hereafter be allowed a corporation of similar character, under the laws of Georgia.

SHIPP & KLINE,
Petitioners Attys.

Filed in office Sept. 8th, 1913, R. G. Clark, Clerk.

ion's
it No. 32. 2225

Doc. No. 453
Ex. No. 32,
Date 2/9/21
Witness: Smithwick
No. 192 P—33.

Georgia, Colquitt County,
In the Superior Court of said County, October Term, 1913.

W. H. Barber, W. C. Vereen, Frank R. Pidcock, R. M. Morrison, J. J. Battle, George T. Demott, C. E. Whitfield, John Clark, Jr., John T. Norman, G. W. Newton, Thomas McMillan, R. J. Corbett, Howard I. Ashburn, A. J. Green, and M. E. Nesmith, all of said State and County, having filed in the office of the clerk of the Superior Court of said County their petition seeking the formation of a corporation, to be known as the Moultrie Packing Company, for the purpose of conducting a general packing business, dealing

in live stock, meats of all kinds, cold storage of meats, vegetables and other articles, and the manufacture of ice by any process whatsoever, and having complied with all the requirements of the law for such cases made and provided, and the court being satisfied that said application is legitimately within the purview and intention of the Code, the same is hereby granted, and the above named persons, their associates and successors, are hereby incorporated under the said name and style of Moultrie Packing Company for and during the period of twenty years with the privilege of renewal at the expiration of that time, and said corporation is hereby clothed with all the rights, privileges and immunities and made subject to all the restrictions and liabilities fixed by law.

W. E. THOMAS
J. S. C. S. C.

This October 8th, 1913.
SHIPP AND KLINE
Attorneys for petitioners.

2226 Georgia, Colquitt County.

Office of Clerk of Superior Court.

I. R. G. Clark, clerk of Superior Court of Colquitt County, Georgia, hereby certify that the above and foregoing is a true and correct transcript of record now in this office, in charter Book "A" Pages 240-41.

Witness my official signature and the seal of said Court hereto affixed, this 27th day of June 1917.

R. G. CLARK
Clerk.

(Seal)

2227

Doc. 453
Ex. 33
Date 2/9/21
Witness: Smithwick.

Commission Exhibit 2

By-Laws of Moultrie Packing Company

Article I.

Section 1. The annual meeting of the Stockholders of the Company shall be held at the office of the Company on the second Tuesday in July of each year, for the purpose of the election of the Directors and the transaction of such other

business as may lawfully come before the meeting. The notice of such annual meeting shall be given to each stockholder of record appearing on the books by sending through the Post-Office to their addresses appearing on the books, at least ten days prior to the meeting, a written or printed notice, signed by the Secretary, stating the time and place of holding, such meeting.

Special meetings of the Stockholders, other than those provided or regulated by statute, may be called by the Board of Directors, and notice thereof shall be given in the same manner as is provided with respect to annual meetings, and shall state for what purpose such meetings are called, and they shall be held at the Company's office above referred to.

Article II. Board of Directors.

Section 1. The Board of Directors shall consist of not less than twelve, nor more than sixteen Stockholders. They shall be elected by stockholders immediately after the adoption of these By-Laws, and annually thereafter at the annual meetings, each share of stock being entitled to one vote, and a majority of the stock voting shall be all that is necessary to elect.

Section 2. The Board of Directors shall have the management and control of the business of the corporation, and shall employ such agents and servants as they deem advisable, and fix the salaries of all officers.

Section 3. Whenever any vacancies shall occur in the Board of Directors by death, resignation or otherwise, the same shall be filled without undue delay by the majority vote by ballot, by the remaining members of the Board. The person so chosen shall hold office until the next annual meeting, or until his successor is elected and qualified.

Section 4. The Board of Directors shall meet at such times, and at such places as they may by resolution determine.

2228 Section 5. The majority of the Directors shall constitute a quorum at all meetings of the Board.

Section 6. The Board of Directors shall choose from their number six persons who shall constitute an Executive Committee, whose duty it shall be to co-operate with the officers, acting in an advisory capacity, having the same authority as the full board of Directors would have. It shall be the duty of the Executive Committee to submit to the Board of Directors a complete report of their actions at every annual

meeting, or oftener, if called upon to do so by the Board of Directors.

2229 Doc. 453
Ex. No. 33

Article III. Officers

Section 1. The officers of the Company shall consist of President, two Vice-Presidents, Secretary and a Treasurer. The office of the Treasurer may be held by either the President or one of the Directors, except at the first meeting of the Stockholders after the organization. At this meeting the officers shall be elected by the Stockholders, each Stockholder being entitled to one vote for each share of stock. The first election shall be held immediately after the organization, and be held annually on the day of the regular meeting of the Board of Directors next ensuing the annual elections.

Section 2. In case of death, resignation or removal of any officer of this Company, the Board of Directors shall cause the election of his successor, who shall hold his office by like tenure for the unexpired term.

Article IV. Amendments.

These By-Laws may be amended, added to or altered by a two thirds vote of all the Directors at any meeting or by a majority vote of the Stockholders at any annual meeting, but no By-Laws regulating the election of Directors and Officers of the Company shall be made within thirty days before any election of the Company.

W. C. VEREEN
President.

JOHN W. GREER
Secretary.

2230 Doc. 453 Date 2/9/21
Ex. 34 Wit; Smithwick

Commission's Exhibit No

Minutes of Adjourned Annual Meeting of the Stockholders of Moultrie Packing Company

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The adjourned annual meeting of the Stockholders of the Moultrie Packing Company was held at the Office of the

Company at Moultrie, Georgia, on Monday, August 13th, 1917, at 10:00 O'clock A. M.

Mr. W. C. Vereen, the President of the Company, was chosen and presided as Chairman of the meeting, and Mr. F. A. Luchsinger was chosen to act as Secretary of the meeting.

The following stockholders were present:

Name	In Person	No. of Shares
W. C. Vereen		5
C. H. Wallow		5
F. A. Luchsinger	By Proxy	5
	Proxy	
W. B. Traynor		150
C. A. Peacock		150
J. J. McQuire		150
T. H. Ingwersen		150
H. C. Carr		125
E. B. Kixmiller		58
		798 Shares.

Representing a majority of the issued and outstanding capital stock of the Company.

Upon motion duly seconded, the following persons were unanimously elected Directors of this Company to serve until the next annual meeting of this Company and until the election and qualification of their successors: T. H. Inwersen, F. J. King, H. C. Carr, E. B. Kixmiller, O. C. E. Mattheis, F. A. Luchsinger, W. C. Vereen

2231 On motion of F. A. Luchsinger, seconded by C. H. Wallow, it was resolved that at this meeting the stockholders elect the officers of the Company instead of the directors electing. Upon motion of F. A. Luchsinger, seconded by C. H. Wallow, the following officers were elected for the ensuing year

President	T. H. Ingwersen,
Vice-Prest.	O. C. E. Matthies,
Sec. & Treas.	C. H. Wallow,
Asst. Sec.	C. A. Peacock,
Asst. Treas.	J. J. McGuire,

No further business being presented, on motion, meeting adjourned.

F. A. LUCHSINGER,
Secretary.

W. C. VEREEN,
Chairman.

2232 Docket 453
Exhibit 35
Date 2/9/21
Witness: Smithwick

Commission's Exhibit N

Minutes o fSpecial Meeting of Board of Directors.

of

Moultrie Packing Co.

Held November 3, 1917.

A Special Meeting of the Board of Directors of the Moultrie Packing Company, was held at the office of the Company in the City of Chicago, State of Illinois, November 3rd, 1917, at ten o'clock in the forenoon, pursuant to the call of the President.

The following Directors were present:

Messrs. T. H. Ingwersen,
F. J. King,
H. C. Carr, E. B. Kixmiller,
O. C. E. Matthies,

a majority of the Board.

Present also Mr. C. A. Peacock.

Mr. T. H. Ingwersen, President, of the Company presided as Chairman of the meeting, and Mr. C. A. Peacock, Assistant Secretary of the Company, acted as Secretary of the meeting.

The following preamble and resolutions were offered and, after full consideration and discussion, on motion duly seconded, were unanimously adopted:

Whereas, This Company is the owner of a certain meat Packing Plant, located at Moultrie, Georgia, and is operating said plant and engaged in the business of selling the products thereof, and

Whereas, this company desires to go out of business and be wound up and liquidated, and

Whereas, Swift and Company, an Illinois corporation,
2233 has offered to purchase all the business and property of every description and wheresoever situated belonging to this Company, and to pay therefor the book value as shown by the books of this Company at the close of business on November 3rd, 1917, and to assume all the debts, contracts, obligations and liabilities of this Company at the close of business on said date, and

Whereas, said offer contains a full and adequate consideration for the same;

Now Therefore, It Is Hereby Resolved, That the said business and property be sold to the said Swift & Company for the said sum, and for the further consideration of the assumption by said Swift & Company of all the debts, contracts, obligations and liabilities of this Company as aforesaid, and

Resolved, That this Company be wound up and liquidated and its net assets be distributed among the stockholders in proportion to their holdings; and

Resolved, That the President of this Company be and he is hereby authorized and directed to take such action as may be necessary to carry into effect these resolutions.

There being no further business presented, the meeting, on motion duly made and seconded, adjourned.

C. A. PEACOCK,
Secretary of the Meeting.

ssion's
bit No. 36.

2234 Docket 453
Exhibit No. 36
Witness Smithwick
Date: 2/9/21

Moultrie Packing Company

Call of Special Meeting of Stockholders.

We, the undersigned, being all the Directors of the Moultrie Packing Company, do hereby call a Special Meeting of the stockholders of said Company to be held on the 5th day of January, 1918, at the office of the Company in the City of Moultrie and State of Georgia, at 10 o'clock in the forenoon, for the purpose of ratifying the sale of the property and business of this Company to Swift and Company and for the transaction of any other business that may come before said meeting.

Dated December 21st, 1917.

T. H. INGWERSEN,
F. J. KING,
H. C. CARR,
E. B. KIXMILLER,
O. C. E. MATTHIES,
F. A. LUCHSINGER,
W. C. VEREEN.

MW:L

2235 Docket 453
Exhibit No. 37
Witness: Smithwick,
Date: 2/9/21

Commission's Exhibit No.

Minutes of
Special Meeting of Stockholders
Of Moultrie Packing Company
Held

A Special Meeting of the stockholders of the Moultrie Packing Company was held at the office of the Company in the City of Moultrie, State of Georgia, January 5th, 1918, at 10 o'clock in the forenoon pursuant to call by the Board of Directors and notice to each stockholder as required by the by-laws.

The following stockholders were present:

In Person:	No. of Shares.
F. A. Luchsinger	5
W. C. Vereen	5
C. H. Wallow	5
By Proxy:	
T. H. Ingwersen	150
F. J. King	125
H. C. Carr	125
E. B. Kixmiller	86
O. C. E. Matthies	5
W. B. Traynor	150
C. A. Peacock	150
J. J. McGuire	150
	956

representing a majority of the stock of the Company.

Mr. F. A. Luchsinger was chosen to preside as Chairman of the meeting, and Mr. C. H. Wallow, Secretary of the Company acted as Secretary of the meeting. The Chairman announced that this meeting was called by the Board of Directors for the purpose of ratifying the sale of the property and business of this Company to Swift and Company. The Secretary thereupon read the call, which is as follows:

2236 "Moultrie Packing Company
Call of Special Meeting of Stockholders

We, the undersigned, being all the Directors of the Moultrie Packing Company, do hereby call a Special Meeting of the

stockholders of said company to be held on the 5th day of January 1918, at the office of the Company in the City of Moultrie and State of Georgia, at 10 o'clock in the forenoon, for the purpose of ratifying the sale of the property and business of this Company to Swift and Company and for the transaction of any other business that may come before said meeting.

Dated December 27th, 1917."

The following preamble and resolutions were offered, and after full consideration and discussion on motion duly seconded, were unanimously adopted:

Whereas, The Board of Directors of this Company at a meeting held at the office of the Company in the City of Chicago, State of Illinois, November 3rd, 1917, duly adopted a resolution authorizing and directing the President of this Company to sell to Swift and Company all the business and property of every description and wheresoever situated belonging to this Company at the book value thereof as shown by the books of the Company at the close of business on November 3rd, 1917, and the assumption by said Swift and Company of all the debts, contracts, obligations, and liabilities of this Company at the close of business on said date, and

Whereas, Pursuant to said authority the President of this Company has sold all the business and property of this Company to Swift and Company for the consideration aforesaid; and

Whereas, Said price is a full and adequate consideration for the same,

Now, Therefore, It Is Hereby Resolved, That the action of the Board of Directors and the President of the Company in disposing of the property and business of this Company to said Swift and Company as aforesaid, be and the same is hereby in all respects ratified, approved and confirmed, and,

2237 Resolved, That this Company be wound up, liquidated and its net assets be distributed among the stockholders in proportion to their holdings, and

Resolved, That the Board of Directors of this Company be and they are hereby authorized and directed to take any action that may be necessary to carry into effect these resolutions.

There being no further business presented, the meeting on motion duly made and seconded, adjourned.

C. H. WALLOW
Secretary of the Meeting.

F. A. LUCHSINGER,
Chairman of the Meeting.

2238 Docket No. 453
Exhibit No. 38
Witness Smithwick
Date: 2/9/21

Commission Exhibit 38

State of Georgia
Colquitt County

C. H. WALLOW, being duly sworn deposes and says that he is the Secretary of the Moultrie Packing Company, a corporation of the State of Georgia; that on the day of December 27th, 1917, he caused a notice of the Special Meeting of the stockholders of said Company to be held at Moultrie, Georgia, on the 5th day of January, 1918, a copy of which is hereto annexed, to be mailed in a sealed wrapper, postage prepaid, addressed to each stockholder of record of said Company to his address as the same appears on the books of the Company.

C. H. WALLOW.

Subscribed and Sworn to before me this 27th day of December, 1917.

E. R. BRYAN,
Notary Public, Colquitt Co., Ga.

2239 Docket No. 453
Exhibit No. 39
Witness Smithwick
Date: 2/9/21

Commission Exhibit 39

Moultrie Packing Company

Notice of Special Meeting of Stockholders

A Special Meeting of the stockholders of the Moultrie Packing Company will be held at the office of the Company in the City of Moultrie, State of Georgia, on the 5th day of January, 1918, at ten o'clock in forenoon, for the purpose of voting on the question of ratifying the sale of the property and business of this Company to Swift and Company,

and for the transaction of any other business that may come before the meeting.

C. H. WALLOW,
Secretary Moultrie Packing Company.

By Order of the
Board of Directors.

ssion's
bit No. 40.

2240 Docket No. 453
Exhibit No. 40
Witness Smithwick
Date: 2/9/21

By-Laws
of
Andalusia Packing Co.

Section 1.

Certificates of stock shall be issued in numerical order from the stock certificate book to be signed by the President and Secretary, and sealed by the Secretary with the corporate seal, and record of each certificate issued shall be kept on the stub thereof.

Section 2.

Transfers of stock shall be made on the books of the corporation, and before a new certificate is issued, the old certificate must be surrendered for cancellation, and marked cancelled, both on the old certificate and on the stub thereof, by the Secretary.

Section 3.

The annual meetings of the stockholders of this corporation shall be held at the principal office of the corporation, in Andalusia, Alabama, beginning between the hours of 9 A. M. and 4 P. M. on the 2nd Monday in October of each year. In case there should be no quorum at said meeting, the stockholders present in person or by proxy, may adjourn said meeting to some other date or hour, and so on from time to time, until a quorum is obtained.

Section 4.

Special meetings of the stockholders may be called at the principal office of the corporation, by a resolution of a majority of the Directors, and that at all such meetings, the

Directors calling the meeting or the Secretary,
2241 shall give to stockholders, notice in writing, by delivering such notice to the last known Post Office address of the stockholder, not less than ten days before said meeting.

Section 5.

A quorum of any meeting of the stockholders shall consist of a majority of the voting stock of the corporation, represented in person or by proxy, and a majority of such quorum shall decide any question that may come before the meeting.

Section 6.

The election of Directors shall be held at the annual meeting of the stockholders. The election shall be by ballot, and each stockholder shall be entitled to cast one vote for each share of stock held by him.

Section 7.

The order of business of the annual meetings, and as far as possible, at all other meetings of the stockholders shall be:—

1. Calling of roll.
2. Proof of due notice of meeting, if a special meeting.
3. Reading and disposing of unapproved minutes.
4. Annual reports of officers and committees.
5. Election of Directors.
6. Unfinished business.
7. New business.
8. Adjournment.

Section 8.

The business and property of the corporation shall be managed by a board of fifteen Directors, who shall be stockholders, and who shall be elected annually by ballot by the stockholders for the term of one year, and until the election and acceptance of their duly qualified successors. Any vacancy in the Board of Directors shall be filled by the remaining members of the Board.

2242 Section 9.

Regular meetings of the Board of Directors shall be held in the principal office of the corporation, in Andalusia, on the 2nd Monday in October in each year, immediately after each annual meeting of the stockholders.

Section 10.

Special meetings of the Board of Directors to be held in the principal office of the corporation in Andalusia, Alabama, may be called at any time by the President or either of the Vice-Presidents, or may be held at any time or place without notice, by unanimous written consent of all the members of the Board. Notice in writing of special meetings of the Board of Directors, called by the President or either of the Vice-Presidents must be given by the President or either of the Vice-Presidents, or Secretary, to each member of the Board personally, or by mailing to each member, said notice in writing, at least three days before such meeting, and such notice need not state the object of the meeting.

Section 11.

A quorum at any meeting of the Board of Directors shall consist of a majority of the entire membership of the Board. A majority of such quorum shall decide any question that may come before the meeting.

Section 12.

Officers of the corporation, other than the Directors, after the first election by the incorporators shall be elected by ballot by the Board of Directors, at their first meeting after the election of the Directors each year. The Board of Directors shall, if any office becomes vacant, fill the same for the unexpired term. The Board of Directors shall fix the compensation of the officers, agent and servants of the corporation.

Section 13.

The order of business at any regular or special meeting of the Board of Directors shall be:—

2243 1. Reading and disposing of unapproved minutes.
2. Reports of officers and committees.
3. Unfinished Business.
4. New Business.
5. Adjournment.

Section 14.

The officers of the corporation, other than the Directors, shall be a President, a First Vice-President, a Second Vice-President, a Secretary and a Treasurer, who shall be stockholders of the corporation, and who shall be elected annually by the Board of Directors for one year, and until their suc-

cessors are elected and have accepted the office. The office of the Secretary and Treasurer may be filled by one and the same person. Any vacancy which occurs in any of said offices, shall be filled by the Board of Directors for the unexpired term.

Section 15.

The President shall preside at all meetings of the stockholders, and of the Board of Directors; shall have general superintendence of the affairs of the corporation, and have charge of its active business operations, subject to the supervision and control of the Board of Directors, and shall, with the approval of the Board of Directors, expressed by resolution adopted at the meeting of the Board of Directors at any other time by writing, signed by all the members of the Board of Directors, make all sales, leases of and contracts concerning lands and realty, and interest or estate therein belonging to this corporation, for cash, or on credit, and execute conveyances thereof and other contract concerning the same, in the name of the corporation, in the manner prescribed for the execution of deeds, leases, mortgages and contracts, concerning lands or any interest therein in Section 19 of these By-Laws, and to do all acts and things named in or contemplated by the second paragraph of the Certificate of Incorporation of this corporation, recorded in the office of the Judge of Probate of Covington County, Alabama, in which are set forth the objects for which this corporation are formed. In case of absence or disability of the President, the first Vice-President shall exercise all his powers and functions, and perform all of his duties. In case of absence or disability of the President and First Vice-
2244 President, the Second Vice-President shall exercise all of their powers, and functions, and perform all of their duties.

Section 16.

The Secretary shall keep the minutes of all the stockholders and Directors' meetings, and subject to the control of the Directors, shall have charge of the corporate seal and the books of the corporation, and shall perform such other duties as are incident to his office or required of him by the Board of Directors.

Section 17.

The Treasurer shall have the custody of ll moneys and

securities of the corporation, and keep regular books of accounts, and shall perform such other duties as are required of him by these By-Laws, or by the Board of Directors, provided that the moneys of the corporation shall be deposited in the name of the corporation in such bank or banks or trust companies as the Board of Directors shall designate, and shall be drawn out by check or draft, executed in the name of the corporation, by the President or by the Treasurer.

Section 18.

Dividends shall be declared at such times as the Board of Directors shall direct, and shall rest in the sound discretion of the Board of Directors.

Section 19.

All notes, drafts, checks and bills of exchange made or issued by the corporation shall be signed in the corporate name, by the President or Treasurer, who shall write, stamp or print the name of the corporation to the same by him, as such President or Treasurer, with his name written in his own proper handwriting, and all notes, drafts, checks and bills of exchange payable to the corporation, or its order, and papers of every kind requiring the endorsement, shall likewise be endorsed by the President or Treasurer, in the corporate name and manner aforesaid; and all deeds, bonds, leases, mortgages, contracts, concerning lands, or interest therein, and all other instruments and contracts in writing,
executed by the corporation not hereinbefore named,
2245 shall be signed in the name of the corporation by the
President, and attested by the Secretary and sealed with the seal of the corporation placed thereon by the Secretary.

Section 20.

The corporate seal shall consist of two concentric circles, between which is the name of the corporation, and in the center shall be inscribed: "Incorporated 1915, Alabama," and said seal is impressed on the margin hereto is hereby adopted as the corporate seal of the corporation.

Section 21.

These By-Laws may be changed, annulled or repealed by the stockholders, at any regular annual meeting, or at any special meeting called for that purpose.

Section 22.

The Board of Directors may pass and enact such additional By-Laws and regulations not inconsistent with these By-Laws as may be convenient to carry on or facilitate the business of the corporation.

After the adoption of the foregoing By-Laws, there being no further business, the meeting was adjourned.

T. E. HENDERSON,
Pr.

A. C. DARLING,
Sect.

2246 Docket No. 453
Exhibit No. 41
Witness: Smithwick
Date: 2/9/21

Commission's Exhibit

Minutes of special meeting of Board of Directors of Andalusia Packing Company held at Northeast Corner of Exchange and Packers Avenues, Chicago, Illinois, on the 24th day of July, 1917, at 4:00 o'clock P. M.

The meeting was called to order by T. E. Henderson, President.

The following directors were present:

T. E. Henderson,
T. H. Ingwersen,
H. C. Carr,
W. B. Traynor,

being a majority of the Board.

H. C. Carr, was chosen and acted as Secretary of the meeting.

The Secretary then read a waiver and consent signed by all of the directors of the company, a copy of which is as follows:

Chicago, July 24th, 1917.

We, the undersigned, being all the directors of Andalusia Packing Company, an Alabama corporation do hereby waive notice of the time and place of a special meeting of directors of said corporation and do hereby consent to the holding of said meeting at 4:00 o'clock P. M., July 24, 1917, at the Northeast Corner of Exchange and Packers Avenue, Chicago, Illinois.

Witness our signatures this 24th day of July, 1917.

G. D. ROGERS
H. C. CARR
WM. B. TRAYNOR
T. H. INGWERSEN
T. E. HENDERSON

The President then tendered his resignation, which, on motion duly made and carried, was accepted. T. H. Ingwersen was then unanimously elected President to fill the vacancy and acted as Chairman of the meeting. 2247

The resignation of S. B. Milligan as First Vice-President was then read and accepted. T. E. Henderson was then unanimously elected First Vice-President to fill the vacancy.

The resignation of J. J. Johnson as second Vice-President was then read and accepted.

The resignation of A. C. Darling as Secretary and Treasurer was then read and accepted. C. A. Peacock was then unanimously elected Secretary to fill the vacancy and C. M. Williamson was then unanimously elected Treasurer to fill the vacancy J. J. McGuire was then unanimously elected Assistant Treasurer to serve until the next annual meeting and until his successor shall be elected and qualify.

On motion duly made and carried, the following resolution was unanimously adopted.

Resoluted, That the funds of the corporation shall be deposited in the name and to the credit of the corporation in the First National Bank of Andalusia, Alabama.

On motion duly made and carried, the following resolution was unanimously adopted:

Resolved, That G. D. Rogers be and he is hereby authorized to countersign all checks made by the corporation.

Upon motion duly made and carried, the following resolution was unanimously adopted:

Resolved, That C. B. Colt ....., of Andalusia, Alabama is hereby appointed statutory agent of the corporation, and the President or Secretary of the corporation is hereby authorized to certify under seal of the corporation and file in the office of the Secretary of State of Alabama and in the office of the Probate Judge of Covington County, Alabama, a certificate of appointment of said statutory agent.

There being no further business, the meeting on motion, adjourned.

H. C. CARR
Secretary.

2248 Minutes of a special meeting of the stockholders of the Andalusia Packing Company held at Northeast corner of Exchange and Packers Avenues, Chicago, Illinois, on the 24th day of July 1917, at 3:30 o'clock P. M.

The meeting was called to order by T. H. Ingwersen, who was chosen and acted as Chairman. H. C. Carr was chosen and acted as Secretary of the meeting.

A waiver and consent signed by all of the stockholders of the company was then read by the Secretary, copy of which is as follows:

We, the undersigned, being the holders and owners of all of the issued and outstanding capital stock of Andalusia Packing Company, an Alabama corporation, do hereby waive notice of the time, place and purpose of holding a special meeting of the stockholders of said corporation, and do hereby consent to the holding of a special meeting at 3:30 o'clock P. M. July 24, 1917, at the Northeast corner of Exchange and Packers Avenue, Chicago, Illinois, for the amendment of the by-laws, the acceptance of resignation of directors of said corporation, and the election of new directors.

Witness our signatures this 24th day of July 1917.

G. D. Rogers
H. C. Carr
Wm. B. Traynor
T. H. Ingwersen
T. E. Henderson

The Secretary then called the roll of the stockholders and the following named persons, owners of the number of shares of capital stock set opposite their respective names, were present in person or by proxy.

Docket No. 453 Exhibit No. 42 Commission's Exhibit
Witness: Smithwick.
Date: 2-9-21.

2249

Name	Number of Shares
T. E. Henderson	100
T. H. Ingwersen	820
G. D. Rogers	100
Represented by proxy to H. C. Carr	
H. C. Carr,	820
W. B. Traynor	825
Total	2665

On motion duly made and carried, all persons holding

proxies of stockholders were allowed to vote the stock of the stockholders whose proxy they held.

The Secretary reported that 2665 shares of stock were present and represented at the meeting, being all of the issued and outstanding stock of said corporation.

The reading of the minutes of the preceding meeting was waived.

On motion duly made and carried, Section 3 of the By-laws was amended to read as follows:

Section 3: The annual meeting of the stockholders may be held at the office of the corporation in Chicago, Illinois, or at the principal office of the corporation in Andalusia, Alabama, beginning between the hours of 9 A. M. and 4 P. M. on the second Monday in October of each year, and if a holiday, on the first day thereafter not a holiday. In case there should be no quorum at said meeting, the stockholders present in person or by proxy may adjourn said meeting to some other day or hour and so on from time to time until a quorum is obtained.

On motion duly made and carried, Section 4 of the By-laws was amended to read as follows:

Section 4: Special meetings of the stockholders may be held at the office of the corporation in Chicago, Illinois, or at the principal office of the corporation in Andalusia, Alabama, and may be called at any time by a resolution of a majority of the Board of Directors. The Secretary of the Com-
2250 pany, shall mail notice in writing stating the time, place and objects of such meetings to the last known address of each stockholder not less than 10 days before said meeting. The stockholders by unanimous written consent may waive notice of the time, place and objects of such meetings.

On motion duly made and carried, Section 8 of the By-Laws as amended at the regular annual meeting of the stockholders held October 9th, 1916, was amended to read as follows:

Section 8: The business and property of the corporation shall be managed by a board of five directors who shall be stockholders and who shall be elected annually by ballot by the stockholders for the term of one year and until their successors are elected and qualify. Any vacancy in the Board of Directors may be filled by the remaining members of the Board.

On motion duly made and carried, Section 9 of the By-Laws was amended to read as follows:

Section 9: Regular meetings of the Board of Directors may be held at the office of the Corporation in Chicago, Illinois, or at the principal office of the corporation in Andalusia, Alabama, on the second Monday in October in each year, immediately after the annual meeting of the stockholders.

On motion duly made and carried, Section 10 of the By-Laws was amended to read as follows:

Section 10: Special meetings of the Board of Directors may be held at the office of the corporation in Chicago, Illinois, or at the principal office of the corporation in Andalusia, Alabama, and may be called at any time by the President or one of the Vice-Presidents or may be held at any time or place without notice by unanimous written consent of all the members of the Board. In the absence of such consent, notice in writing of special meetings of the Board of Directors called by the President or one of the Vice-Presidents shall be given by the President or one of the Vice-Presidents or Secretary to each member of the Board personally or by mailing to each member said notice in writing at least three (3) days before such meeting and such notice need not state the object of the meeting.

2251 On motion duly made and carried, Section 14 of the By-Laws was amended to read as follows:

Section 14: The officers of the corporation shall be a President, a First Vice-President, a Second Vice-President, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer who shall be elected annually by the Board of Directors for one year and until their successors are elected and qualify.

The offices of Secretary and Treasurer may be filled by one and the same person.

Any vacancy which occurs in any of said offices may be filled by the Board of Directors.

On motion duly made and carried, Section 16 of the By-Laws was amended to read as follows:

Section 16: The Secretary, shall keep the minutes of all the stockholders' and directors' meetings and, subject to the control of the directors, shall have charge of the corporate seal and the books of the corporation, and shall perform such other duties as are incident to his office or required of him by the Board of Directors. In the absence or disability of the Secretary, the Assistant Secretary shall act in his stead.

On motion duly made and carried, Section 17 of the By-Laws was amended to read as follows:

Section 17: The Treasurer shall receive and have the custody of all moneys and securities belonging to the corporation, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall sign or countersign all checks made by the corporation, together with another to be appointed by the Board of Directors, and, when necessary or proper, together with the President or Vice-President, promissory notes on behalf of the corporation. When necessary or proper he shall endorse on behalf of the corporation for collection only checks, notes, and other obligations, and shall render to the President and Directors at the regular meeting of the board, and whenever they may require it, an account of all his transactions
2252 as treasurer and of the financial condition of the corporation. He shall give the corporation a bond in a sum and with surety satisfactory to the board of directors for the faithful discharge of the duties of his office and for the restoration to the corporation in case of death, resignation or removal from office, of all its books, papers, vouchers, money, or other property of whatsoever kind in his possession. In the absence or disability of the treasurer, the assistant treasurer shall act in his stead.

On motion duly made and carried, Section 19 of the By-Laws is hereby repealed.

On motion duly made and carried, Sections 20, 21 and 22, of the By-Laws are hereby renumbered 19, 20 and 21, respectively.

Each of the following named directors having tendered their resignations in writing and each having become disqualified to hold office by reason of the transfer of all of the stock held by each of them, on motion duly made and carried the resignations of:

A. C. Darling	A. S. Douglas
J. L. Knox	D. B. Gantt
O. L. Benson	R. G. Wood
S. B. Milligan	E. L. More
W. D. Hutchinson	Dr. S. W. May
C. S. O'Neil	J. M. Robinson
D. A. McArtan	D. H. Morris, Jr.
J. J. Johnson	A. F. Merrill

were accepted.

On motion duly made and carried, T. H. Ingwersen, G. D. Rogers, H. C. Carr and W. B. Traynor were unanimously elected as directors to fill the vacancies.

There being no further business, the meeting on motion, adjourned.

H. C. CARR
Secretary.

REF:M

2253 Special meeting of the Board of Directors of the Andalusia Packing Company was held at Union Stock Yards, Chicago, Illinois, Tuesday, August 7th, 1917. Commission's Exhibit No.

Present:

T. H. Ingwersen
H. C. Carr,
W. B. Traynor

a majority of the Board.

Also—C. A. Peacock, Secretary.

Mr. T. H. Ingwersen, President, acted as Chairman and Mr. C. A. Peacock acted as Secretary of the meeting.

A consent to the Meeting signed by all of the Directors of the Company was filed with the Secretary.

On motion duly made and seconded, the following resolution was unanimously adopted.

Resolved, That checks drawn against funds of the Andalusia Packing Company deposited with any Bank or Trust Company shall be signed by C. M. Williamson, Treasurer, and countersigned by Geo. D. Rogers, Director, and—

Further Resolved, That all resolutions in conflict herewith be and the same are hereby rescinded.

There being no further business to come before the meeting, on motion duly made and seconded, same adjourned.

C. A. PEACOCK,
Secretary.

ion's
it No. 44.

Docket No. 453 Exhibit No. 43
Witness: Smithwick Date: 2-9-21.

2254 A meeting of the Directors of the Andalusia Packing Company was held at Union Stock Yards, Chicago, Illinois, Tuesday, August 14th, 1917.

Present

T. H. Ingwersen,
H. C. Carr,
W. B. Traynor.

a majority of the Board.

Also—C. A. Peacock, Secretary.

Mr. T. H. Ingwersen, President of the Company, presided as Chairman and Mr. C. A. Peacock acted as Secretary of the meeting.

Minutes of the previous meeting were read and, on motion duly made and seconded, approved.

The resignation of Mr. C. M. Williamson as Treasurer to take effect Monday, August 20th, 1917, was received; and, on motion duly made and seconded, same was unanimously adopted.

On motion duly made and seconded, it was then voted to elect Mr. C. B. Colt as Treasurer of the Company to take effect Monday, August 20th, 1917.

On motion duly made and seconded, it was unanimously

Resolved, That on and after August 20th, 1917, checks drawn against funds of the Andalusia Packing Company deposited with any Bank or Trust Company shall be signed by C. B. Colt, Treasurer, and countersigned by Geo. D. Rogers, Director, and

Further Resolved, that all resolutions in conflict herewith be and the same are hereby rescinded.

There being no further business to come before the meeting, on motion duly made and seconded, same adjourned.

C. A. PEACOCK
Secretary.

ion's
it No. 45.

Docket No. 453 Exhibit No. 44.
Witness; Smithwick. Date: 2-9-21.

2255 Regular Annual Meeting of the Stockholders of Andalusia Packing Company was held at the office of the Company Union Stock Yards, Chicago, Illinois, on Monday, October 8th, 1917.

The meeting was called to order by Mr. H. C. Carr, who

was chosen and acted as Chairman, Mr. C. A. Peacock, Secretary of the Company acted as Secretary of the meeting.

The Secretary then called the roll of the stockholders, and the following named persons, owners of the number of shares of capital stock set opposite their respective names, were present in person or by proxy:

Name	Number of Shares
H. C. Carr	820
W. B. Traynor	825
T. E. Henderson	100
Total	1745

On motion duly made and carried, all persons holding proxies of stockholders were allowed to vote the stock of the stockholders whose proxy they held.

The Secretary reported that 1745 shares of stock were present and represented at the meeting, being a majority of the issued and outstanding stock of said corporation.

The reading of the minutes of the preceding meeting was waived.

The officers and committees had no annual report to make and it was therefore moved and carried that their reports be deferred until the next regular annual meeting of the stockholders.

On motion duly made and carried, it was voted to proceed by ballot to the election of Directors for the ensuing year and until their successors are elected and qualify.

Ballots having been taken, the following were declared elected Directors of the Company for the ensuing year and until their successors are elected and qualify.

T. E. Henderson
T. H. Ingwersen
G. D. Rogers
H. C. Carr
W. B. Traynor

There being no further business to come before the meeting, on motion duly made and seconded, meeting adjourned.

C. A. PEACOCK,
Secretary.

Docket No. 453 Exhibit No. 45.
Witness: Smithwick Date: 2-9-21.

2256 Adjourned meeting of the Board of Directors of Andalusia Packing Company was held at the office of

Commission Exhibit N

the Company Union Stock Yards, Chicago, Illinois, Monday, October 29th, 1917.

Mr. T. H. Ingwersen, President, called the meeting to order.

There were present.

T. H. Ingwersen,
H. C. Carr,
W. B. Traynor.

a majoritw of the Board.

Also—C. A. Peacock, Secretary.

Mr. C. A. Peacock was chosen and acted as Secretary of the meeting.

On motion duly made and seconded it was voted to dispense with reading of minutes of previous meeting.

On motion duly made and seconded it was voted to proceed by ballot to the election of officers for the ensuing year and until their successors are elected and qualified.

Ballot was taken and the following were unanimously elected officers of the Company:

President T. H. Ingewrsen,
Vice Pres. T. E. Henderson,
Secretary C. A. Peacock,
Treasurer C. B. Colt,
Asst. Treas. J. J. McGuire.

There being no further business to come before the meeting, on motion duly made and seconded, same adjourned.

C. A. PEACOCK
Secretary.

Docket No. 453 Exhibit No. 46.
Witness: Smithwick Date: 2-9-21.

's
o. 47. 2257 A meeting of the Directors of the Andalusia Packing Company was held at Union Stock Yards, Chicago, Illinois. Tuesday March 26th, 1918.

Present:

T. H. Ingwersen,
W. B. Traynor,
H. C. Carr.

a majority of the Board.

Also—C. A. Peacock, Secretary.

Mr. T. H. Ingwersen, President of the Company, presided as chairman, and Mr. C. A. Peacock acted as Secretary of the meeting.

On motion duly made and seconded it was unanimously adopted to dispense with reading of the Minutes of the previous meeting.

On motion duly made and seconded the following Resolution was unanimously adopted.

Resolved: That, a dividend of Ninety-seven Thousand Two Hundred Seventy-Six Dollars and Fourteen Cents ($97,276.14) be and hereby is declared payable March 30th, 1918 to stockholders of record on the books of the Company on that date.

There being no further business to come before the meeting, on motion duly made and seconded, same adjourned.

C. A. PEACOCK,
Secretary.

Docket No. 453 Exhibit No. 447.
Witness: Smithwick Date: 2-9-21

2258

Docket No. 453 Exhibit No. 48. Commission's Exhibit N
Witness: Smithwick Date: 2-9-21

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OR ANDALUSIA PACKING COMPANY HELD MARCH 30TH, 1918.

A special meeting of the Board of Directors of Andalusia Packing Company was held at the office of the Company in the City of Chicago, Cook County, Illinois, Saturday, March 30th, 1918, at 10:00 o'clock in the forenoon, pursuant to call of the President and notice to all the directors.

Present:

Messrs. T. H. Ingwersen,
H. C. Carr,
W. B. Traynor.

being a majority of the Board.

Present also Mr. C. A. Peacock.

Mr. T. H. Ingwersen, President of the Company, presided as Chairman of the meeting, and Mr. C. A. Peacock, Secretary of the Company, acted as Secretary of the meeting.

On motion duly made and seconded, the following resolution was unanimously adopted:

Resolved that the Treasurer of this company be and he hereby is authorized and directed to set aside the sum of $17,000,00 as a reserve fund for the payment of federal taxes.

On motion duly made and seconded, the following resolution was unanimously adopted:

Resolved, that a diivdend of $97,276.14 be and the same is hereby declared payable out of the surplus profits of the company to the stockholders of record at the close of business March 30th, 1918.

On motion duly made and seconded, the following resolution was unanimously adopted:

Whereas, Swift and Company, a corporation of the State of Illinois, has offered to purchase all of the property and 2259 business of this company at the book value thereof at the close of business Saturday, March 30th, 1918, for cash and assume all the debts, liabilities and obligations of this company; and

Whereas, it is the judgment of this Board of Directors that the price aforesaid is a full and fair price for the property and business of this company, and it is to the best interest of this company to accept said offer;

Therefore, Resolved, That said offer be and the same is hereby accepted; and

Resolved, Further, That the proper officers of this company be and they hereby are authorized and instructed to convey, assign and transfer to said Swift and Company all of the property and business of this company by proper instruments of conveyance on receipt of the purchase price aforesaid.

There being no further business presented, on motion the meeting adjourned.

C. A. Peacock
Secretary

MW:O

2260 MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF ANDALUSIA PACKING COMPANY HELD JUNE 29TH, 1918. Commission Exhibit N

A special meeting of the Board of Directors of Andalusia Packing Company was held at the office of the Company in the City of Chicago, Cook County, Illinois, Saturday, June 29th, 1918, at 10:00 o'clock in the forenoon pursuant to call of the President and notice to all the directors.

Present:

Messrs. T. H. Ingwersen,
H. C. Carr,
W. B. Trayrnor.

being a majority of the Board.

Present also Mr. C. A. Peacock.

Mr. T. H. Ingwersen, President of the company presided as Chairman of the meeting, and Mr. C. A. Peacock, Secretary of the Company, acted as Secretary of the meeting.

On motion duly made and seconded, the following resolution was unanimously adopted:

Whereas this company has sold and disposed of all its property and business to Swift and Company and has received the purchase price thereof and now has on hand $133,250.00 being the proceeds of the sale of its property and business as aforesaid; and

Whereas this company desires to liquidate its affairs and make distribution to its stockholders;

Therefore, Resolved, That the Treasurer of this Company be and he hereby is authorized and directed to distribute said sum on hand, to wit, the sum of $133,250.00 to the stockholders of this company of record at the close of business June 29th, 1918.

There being no further business presented, on motion the meeting adjourned.

C. A. PEACOCK
Secretary.

MW:O

Docket No. 453 Exhibit No. 49.
Witness: Smithwick. 2-9-21.

2261 Docket No. 453 Exhibit No. 50. Commission Exhibit N
Witness: Smithwick 2-9-21.

This Contract, made in duplicate, by and between T. E. Henderson and A. C. Darling, of the City of Andalusia, State

of Alabama, parties of the first part, and G. F. Swift, Jr., of Chicago, Illinois, party of the second part, Witnesseth:

Whereas, the parties of the first part are the owners of two hundred and seventy-four (274) shares of the capital stock of the Andalusia Packing Company, an Alabama corporation; and,

Whereas, the undersigned and all other stockholders of the said Company have agreed to sell all of the shares of the capital stock of the said Company at the price of Seventy Dollars ($70.00) per share;

Now, Therefore, the said parties of the first part, for and in consideration of the purchase of all of the capital stock of the said Company from them and all other stockholders of the said Company and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby jointly and severally guarantee to the party of the second part that the note or notes and other obligations of the said Andalusia Packing Company representing moneys borrowed as of May 1, 1917, aggregate the sum of Three Hundred Forty-two Thousand Nine Hundred Twenty-four Dollars and Fifty-four Cents ($342,924.54) and no more; that on the date hereof the unpaid notes and other obligations of the said Andalusia Packing Company, representing moneys borrowed, aggregate the sum of One Hundred Ninety-nine Thousand Seven Hundred Seventy-seven Dollars and eighty-eight Cents ($199,777.88) and no more; that since May 1, 1917, the notes and other obligations of the said Andalusia Packing Company representing moneys borrowed aggregating One Hundred Forty-three Thousand One Hundred Forty-six Dollars and Sixty-six Cents ($143,146.66) have been paid off and discharged, and the said parties of the first part jointly and severally promise and agree to pay all notes and other obligations of the Andalusia Packing Company representing moneys borrowed in excess of the said sum of One Hundred Ninety-nine Thousand Seven Hundred Seventy-seven Dollars and Eighty-eight Cents ($199,777.88) and to save and keep the said party of the second part and the said Andalusia Packing Company harmless from payment of, or liability for all obligations and liabilities of said Andalusia Packing Company for moneys borrowed in excess of the sum last aforesaid.

2262 The said party of the second part covenants and agrees that he will pay or cause to be paid when due, such notes and other obligations of the said Andalusia Pack-

ing Company representing moneys borrowed on the date hereof, which shall not exceed in the aggregate the sum of One Hundred Ninety-nine Thousand, Seven Hundred Seventy-seven Dollars and Eighty-eight Cents ($199,777.88).

In Witness Whereof the parties hereto have hereunto set their hands and seals this 24th day of July, A. D. 1917.

T. E. HENDERSON (Seal)
A. C. DARLING (Seal)
G. F. SWIFT, JR. (Seal)

Witness:
(Signed) H. C. CARR
H. C. CARR
H. C. CARR

2263

DOCKET No. 453 EX. No. 50A
Witness: Smithwick. 2-9-21

Note or Notes and Other Obligations of the
ANDALUSIA PACKING COMPANY
Representing Moneys Borrowed as of
May 1st, 1917.

Date of Obligation	To Whom Payable	Due	Amount
August 23, 1916.	O'Neil-Law & Co. Promissory Note Carrying Interest from March 1st 1917 at 8% per annum.	March 1st, 1917	$10,420.00
October 30, 1916.	P. N. Hickman Promissory Note Interest included in face of note	October 25, 1917	5,400.00
April 30, 1917.	Farmers & Merchants National Bank, Troy, Ala. Promissory Note. Interest included in face of note	October 30, 1917	12,500.00
May 30, 1917.	Farmers & Merchants National Bank, Troy, Ala. Promissory note. Interest included in face of this note.	November 30, 1917	12,500.00
December 7, 1916	D. H. Morris Promissory note with interest from date of note at 8% per annum	June 7, 1917	30,000.00
December 26, 1916	First National Bank, Montgomery. Promissory Note. Interest included in face of this note.	August 22, 1917	10,000.00
December 30, 1916,	First National Bank of Andalusia Promissory Note. Interest included in face of this note.	August 9, 1917	5,300.00
2264			
January 12, 1917.	C. S. O'Neal, Promissory Note. Interest included in face of this note.	January 12, 1918	10,800.00
January 29, 1917,	First National Bank, Troy, Ala. Prom. Note. Interest included in face of this note	August 29, 1917	10,000.00

Date of Obligation	To Whom Payable	Due	Amount
January 29, 1917,	First National Bank, Troy, Ala. Promissory Note. Interest included in face of this note.	September 29, 1917	$10,000.00
February 7, 1917,	Henry Opp. Promissory Note, Interest included in face of this note.	February 6, 1918	32,400.00
February 16, 1917,	S. B. Milligan Promissory Note carrying interest from date of note at 8% per annum	Demand	10,000.00
March 28, 1917,	First National Bank of— Dozier, Ala. Promissory Note, Interest included in face of this note.	March 28, 1918	3,710.00
September 8, 1916,	F. K. Feagin Promissory Note. Interest from date of Note at 8% per annum	Payable on Demand	8,000.00
July 12, 1917	Andalusia Fertilizer Company. Promissory Note carrying interest from date of note at 8% per annum.	Payable on Demand.	28,747.88

NOTES PAID SINCE MAY 1st, 1917.

May 9th,	Seaboard National Bank, New York City,	12,500.00
May 10th,	Farmers National Bank, Geneva, Ala.	6,000.00
2265		
May 18th,	M. E. Donaldson, Opp. Ala.	10,466.66
May 29th,	First National Bank, Enterprise, Ala.	12,480.00
June 8th,	First National Bank, Andalusia, Ala.	10,400.00
June 8th,	Seaboard National Bank, New York City.	12,500.00
June 21st,	First National Bank, Montgomery, Ala.	10,000.00
June 15th,	First National Bank, Brantley, Ala.	5,500.00
July 10th,	Seaboard National Bank, New York City	12,500.00
July 10th,	Bank of Andalusia, Andalusia, Ala.	10,200.00
July 12th,	National Bank of Commerce, Pensacola, Fla.	30,600.00
July 22nd,	First National Bank, Montgomery, Ala.	10,000.00

's
No. 51. 2266 Copy

Whereas the undersigned are the owners of 274 shares of the capital stock of the Andalusia Packing Company of Andalusia, Ala., a corporation incorporated under the laws of the State of Alabama;

And Whereas, the undersigned and all other stockholders of the said company have agreed to sell all of the shares of the capital stock of said company at the price of $70.00 per share;

Now, Therefore, this agreement witnesseth, that the undersigned for and in consideration of the purchase of all the capital stock of the said company from them and all other stockholders of the said company and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby jointly and severally represent and guarantee to all and each of the transferees of said stock that the total number of shares of stock issued by the said company and outstanding on the date hereof are 2665 shares, evidenced by certificates delivered this day to the said transferees.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 24th day of July, A. D. 1917.

T. E. HENDERSON (Seal)
A. C. DARLING (Seal)

Witness:
H. C. CARR
H. C. CARR

Docket No. 453 Exhibit No. 51
Witness: Smithwick Date 2-9-21.

. 52. 2267 Copy

Whereas, the undersigned, are the owners of 274 shares of the capital stock of the Andalusa Packing Company of Andalusia, Ala., a corporation, incorporated under the laws of the State of Alabama; and,

Whereas, the undersigned and all other stockholders of the said company have agreed to sell all of the shares of the capital stock of said company at the price of Seventy Dollars ($70.00) per share;

Now, Therefore, this agreement witnesseth; That the undersigned, for and in consideration of the purchase of all the capital stock of the said company, from them and all other

stockholders of the said company, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby jointly and severally guarantee to all and each of the transferees of said stock, that the assets and liabilities of the company on the 1st day of May, 1917, were as shown by its books a statement of which is attached hereto and marked "Exhibit A," and that on the date hereof said assets have not been decreased to any greater extent than the liabilities of the company have been decreased, and the undersigned jointly and severally promise and agree to pay any and all claims, demands, liabilities and obligations of the company which have further decreased said assets.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 24th day of July, A. D. 1917.

T. E. HENDERSON (Seal)
A. C. DARLING (Seal)

Witness:
WM. B. TRAYNOR
Witness:
WM. B. TRAYNOR

Docket No. 453 Exhibit No. 52.
Witness: Smithwick Date: 2-9-21.

2268

Copy

Copy from Chas. H. Swift's Office.

EXHIBIT "A"

Andalusia, Ala., 6-8-17

Assets and Liabilities
Andalusia Packing Company, May 1, 1917.

Assets:		
Cash	$44,039.10	
Accounts Receivable	90,849.16	
Notes Receivable	900.00	$400 pd. 6/20
Plant & Equipment	142,983.20	
Office Fixtures	1,314.93	
Unexpired Insurance	955.70	
Unearned Interest	3,501.86	
Personal Accounts R R Claims	687.09	
Inventory	261,079.09	
		$546,310.13

Liabilities	
Capital stock (250,000	$133,692.00
Notes (305,160.00) and	347,509.07
Accounts Payable (42,349.07)	
Accrued Interest	2,384.74
Profit	62,724.32
	$546,310.13

Com's Ex. No. 53.

2269

Moultrie Packing Company
Moultrie—Ga
Financial Statement as of April 30th 1917

Docket No. 453
Exhibit No. 53
Date Feb. 9, 1921.
Witness Smithwick.

Mr. W. C. Vereen,
President,
Moultrie Packing Company,
Moultrie, Ga.

2270

Moultrie, Ga.
May 15th, 1917.

Mr. W. C. Vereen,
President,
Moultrie Packing Company,
Moultrie, Ga.

Dear Sir:

Herewith I beg to hand you Financial Report showing condition of Moultrie Packing Company at the close of business April 30th, 1917.

Yours very truly,

(Illegible)
Auditor.

2271

Moultrie Packing Company
Moultrie—Ga

Statement of Operations from January 1st to April 30th 1917

Purchases—			
Cattle	$ 10340.23		
Hogs	479423.88		
Feed	1422.95		
Goats	66.75		
Grease	3234.93		$494488.74
Less Inventory Clearing Account			34849.13
Cost of Products Sold			$459639.61
Sales—			
Beef	10342.91		
Pork	470906.26		
Goat	13.76		
Hide	3673.76		
Lard	106705.97		
Grease	17864.73		
Tankage	3677.48		
Tallow	93.35		
Hair	1469.66		
Killing Cattle	32.50		
Total Value of Sales	$614780.38		
Expense on Sales—			
Freight on Meat	$17122.49		
Commission	12536.45		
Allowances	2660.98	32319.92	
Net Value of Sales			$582460.46
Gross Profit			122820.85

2272

Moultrie Packing Company
Moultrie, Ga

Operating Statement January 1st to April 30th 1917

Operating Expense

Boxes	$ 4495.27	
Barrels	3638.70	
Fuel	4516.34	
General	748.10	
Ice & Storage	1797.17	
Lard Pails	1097.06	
Labor	17962.76	
Oil Waste & Packing	402.75	
Paper Cloth & Twine	3269.89	
Refrigeration	334.39	
Repairs	496.96	
Supplies	6385.03	
Drayage	1061.59	
Laundry	34.00	
Total Plant Expense		$46240.01
Interest	$ 8209.40	
Insurance	1240.45	
Legal	312.16	
Office	187.91	
Printing & Stationery	359.08	
Postage	482.74	
Salaries	4566.54	
Taxes	345.25	
Traveling	100.63	
Tel & Tel.	376.32	
Car Repairs	174.97	
Advertising	248.30	
Total General Expense		$16603.75
Total Operating Expense		$62843.76

2273

Moultrie Packing Company

Moultrie—Ga

Statement Showing Financial Condition from January 1st April 30th—1917

Assets—		
Current—		
Cash on hand and in Banks..	$ 28997.37	
Accounts receivable	86772.73	
Notes receivable	6092.70	
Inventory	283483.59	
Accrued interest	1626.18	
Unexpired insurance	1511.12	$408483.69
Fixed—		
Buildings	105546.38	
Real estate	1648.75	
Machinery & equipment	43106.00	
Office furniture & fixtures	1970.95	$152272.08
		$560755.77
Liabilities—		
Capital stock (adjst pending)..	$ 97020.00	
Notes payable	290944.40	
Trade acceptances	63048.61	
Accounts payable	10345.11	
Brokers comission accounts ..	3197.92	
Reserve for interest payable (5) year notes	1473.32	
Reserve for taxes	340.00	
Reserve for bad accounts	1923.55	
Sundry accounts	283.07	
Surplus account April 30th 1917	92170.79	
		$560755.77

2274

Moultrie Packing Co

Moultrie—Ga

Summary of Operation January 1st 1917 to April 30th 1917.

Gross profit	$122820.85
Less operating expense	62843.76
Net profit carried to surplus	$ 59977.09

Surplus Account

Surplus December 30th 1916	$ 33386.42	
Net profit Jan 1st to March 3rd 1917	19742.21	
Net profit March 4th to March 30 1917	20166.01	
Net profit April 1st to April 30th 1917	18876.15	
Surplus May 1st 1917		$92,170.79

n's No. 54. 2275

Docket No. 453
Exhibit No. 54
Date Feb. 9, 1921
Witness Smithwick.

Cattle Production Report

Summary—April 1917

No. of cattle killed	73	
Live weight	45685	
Dressed weight	24329	
Average live weight	626	
Average dressed weight	333	
Average live cost		8.25
Average dressed cost		12.23
Average dressed cost offal & hides		10.48
Yield		53.25

2276

Docket No. 453
Exhibit No. 55
Date Feb. 9, 1921.
Witness Smithwick.

Commission's Exhibit No.

Hog Production Report

April—1917

Hogs Handled on Killing Floor—	No	Live weight	Dressed wt.
Packers	6976	834372	560784
Lard	13	1797	1071
Condemned	58	10033	5916
	7047	846202	567771
Average live weight		120	
Average dressed weight		80	
Average dressed cost			17.10
Average dressed cost offal & hides			15.20
Yield without offal			67.22
Yield with offal			73.49
Labor cost handling hogs thro plant			.41
Average fuel cost per head			.08

2277

Docket No. 453
Exhibit No. 56
Date Feb. 9, 1921
Witness Smithwick

Commission's Exhibit No.

Mr. Louis F. Swift,
Office.

Moultrie Packing Company

Sewage Disposal:

Sewage is now discharged through a 10" sewer about 3000 feet to a small tortuous stream about 1/2 mile east of town. Stream is badly obstructed with fallen trees, and in early summer flow is so small that it stagnates in pools. In fall and winter, am informed that flow is sufficient at all times to prevent stagnation.

By removing the fallen timbers and cutting ditches to straighten stream and drain some of its pools (in addition to new catch basin and evaporator hereinafter recommended), the condition would be much improved so that there would be no just cause for complaint. There are only about six families who live within 200 to 400 yards of the stream, who

have made objection, and we think that they would be satisfied; but, if not, think the citizens of Moultrie would not allow them to take any unreasonable action against us, as they take considerable pride in having the packing plant there.

Mr. Brooks has an offer to clean out stream as suggested, for $400; but I think we may have to spend $1500 or $2000 to do a good job. He is going to start right away on this work.

In case plant grows to a considerable size, we might have to treat sewage with chlorine or some other process.

Plant Value:

Think their statement of $150,000 is a correct value of the plant when it was built three years ago. It would cost $225,000 to reproduce it today. Estimate depreciation at 10% making present day value about $202,500.

2278 Plant Condition:

Buildings are of reinforced concrete construction in good condition, except that floors are worn, and lith insulation is falling off ceilings of hog coolers, and plaster is falling in curling cellars.

Equipment, while very limited, is all modern and in good condition. They are short of refrigeration and have no means of slushing coils, and pipes are frozen together impeding air circulation, resulting in slow chilling of hogs.

Recommend installing cork on ceilings of hog coolers only, replacing plaster in other coolers, and installing brine circulation over pipes in hog coolers.

Cost.....$4000.00

Beef Killing and Chilling:

They have one beef bed and can kill 5 cattle per hour; but have cooler capacity for only 60 cattle, or 30 per day.

To increase capacity to 50 per day, recommend install another beef bed and convert one of the old hog coolers (now used for lard and sausage) into a beef cooler by raising coil chamber.

Cooler capacity 120 to 60 cattle daily Cost $3500.00

To increase capacity to 100 cattle per day, the two beds would be sufficient working 10 hours a day. Convert both old hog coolers into beef coolers by raising coil chamber and extend all three coolers one bay south.

Cooler capacity 240 or 120 per day. Cost added to above $4000.00

Beef Shipping Cooler:

They have no place on first floor for holding beef ready for shipment. Two small coolers now used for holding fresh pork and lard for shipment could be thrown into one room, size 32′ x 48′ and railed for beef quarters with refrigerating pipes over alleys. This covers point raised by Mr. H. C. Carr.

Cost.....$1200.00

2279 Hog Killing:

They have well laid out equipment with chain hoist 15′ tub, horizontal barrel scraper and bench and 65 ft. dressing rail without chain. Have killed 1021 in 7½ hours. Normal rate 600 in 5 hours using same gang cutting 5 hours. In January they averaged 3300 per week.

To increase capacity to 1200 per day, same equipment will serve, but Mr. Brooks recommends a Brecht scraper which will do better work on heads and legs and save about six men scraping. Also move partition and rearrange rails to give more working room.

Cost.....$4000.00

Hog Killing and Curing:

They have two hog coolers, 20′ x 80′, capacity 600 each, two sweet pickle cellars, 80′ x 80′, and 48′ x 64′; total capacity 1,200,000# and one dry salt cellar 70′ x 80′, capacity 800,000#; also one room 40′ x 80′ used for dry salt meats and lard.

To increase capacity recommend building an addition to the south end of plant, size 80′ x 80′; third floor to be used for hog chilling with a capacity of 2400 hogs; 2nd floor for S. P. meats, capacity 800,000#; and 1st floor for D. S. meats, capacity 900,000#.

Cost.....$75,000.00

This will bring total chilling capacity to 3000 in coolers or 1500 daily, S. P. meats 2,000,000#, and D. C. meats 1,700,000#.

Cutting and Sausage:

The room 40′ x 80′ on 3rd floor now used for D. S. meats and lard would be divided one-half to be used for cutting and one-half for sausage and sausage meats, both of which would be displaced by the enlargement of beef coolers.

They have sausage hasher, silent cutter, mixer, and stuffer,

(which will remain in present location), and can double output with present equipment.

Offal Floor:

No equipment except one washing bench.

2280 Recommend install one hog head bench and splitter, jaw puller, snout puller, fat washer, gut washer, and tables, chutes, etc.

Cost.....$2500.00

P. S. Lard and Tallow Equipment:

They now have one tank 4′ x 12″ and one 6′ x 5′ for lard and can produce 8000# P. S. lard daily. Recommend use the latter for tallow and install two (2) additional 6′ x 12′ tanks for lard. Also two (2) draw-off tanks and one (1) dump box. It will be necessary to cut holes in concrete floors and rearrange partitions to accommodate these tanks.

Cost.....$3000.00

Refined Lard:

They have one (1) 4′ x 7′ bleach kettle, one 21 plate 18″ filter press, storage tank, 3′ x 5′ lard roll and a beater tank for whipping lard after chilling; and can refine 10,000# daily. To double capacity, recommend another filter press, and a shell type brine cooler to get 0° brine instead of 20° brine from the plant system. It will also be necessary to move some of this equipment to make room for the P. S. Lard tank.

Cost.....$1500.00

They also have a 20″ square hand press for making lard oil for sausage and lard stearine which is put back into lard.

Inedible Grease, Tallow and Tankage:

They have two 6′ x 12′ vertical combination banks and dryers and a small tankage mill, and have been notified by the Government to put in a third tank and dryer to cut out night operation. Tankage is carried in closed trucks up elevator through edible departments to inedible tank room.

Recommend install blow tank to blow tankage from dump box to inedible tanks, install a 6′ x 12′ tank and dump box, use all three tanks for cooking only, install a 250 ton hydraulic press and a fertilizer dryer. There will be no space left in this room for storage and it will be necessary to take tierces of tallow and grease and bags of fertilizer to storage shed across the track as soon as they are filled.

Cost.....$7000.00

Tankwater:

Now being wasted into sewer. Recommend install a 2281 double effect Swenson evaporator and pumps.

Cost.....$6,500.00

This will materially improve the sewage.

Catchbasin:

Is hardly large enough and will have to be moved to make room for boilers. Recommend a new catchbasin 12′ x 30′ with two passes and Jennings screen, located west of plant across track.

Cost.....$4,000.000

Boiler and Engine Room:

They have 2—100 H. P. shell boilers, 1-50 Ton refrigerating machine with only 30 tons condenser capacity, brine tank, 50 KW power engine, 200 ft. air compressor, two pumps, 500 ft. air blown well capacity about 100 gal. per min., and concrete reservoir. They are short of refrigerating capacity to handle present business properly.

To double capacity, recommend install 2—125 H. P. boilers, one 100 Ton refrigerating machine, new well and air compressor and two pumps. This will require extensions to both engine and boiler room.

Cost.....$32,000.00

Office:

If plant is extended to the south, office will have to be removed and a new one built.

Cost.....3,500.00

Smokehouses:

They have three smoke houses with 2 hanging floors, total capacity all three, 15,000# daily. One is used for sausage. If additional capacity is desired a 50% increase can be obtained by adding another story 32′ x 64′,—a space 32′ x 32′ being gained for storage of tin-ware.

Cost.....5,000.00

A further increase could be obtained by tearing out toilet rooms in front of elevators; but this is not recommended unless absolutely necessary.

The writer reviewed all of these matters with Mr. Brooks in Atlanta and he approved proceeding on the above basis.

W. A. Burnet

WAB/MMH

ion's
No. 57. 2282

Docket No. 453
Exhibit No. 57
Date Feb. 9, 1921
Witness Smithwick

H. J. Nelson.

Herewith Report in approximation of net book value of the Capital Stock of the Moultrie Packing Co. as at April 30th, 1917.

Audit made May 28 & 29th. 1917

As a result of this investigation I am of the firm conviction that the Capital Stock of this concern is worth $165.00 per share as a going business, and recommend its purchase I secured from Mr. Verren two signed statements.

(A) Affirmation of Balance Sheet.

(B) Guarantee to deliver 100% of the total outstanding stock.

Please find detailed statements next attached in following order.

(1) Cash.
(2) Accounts Receivable.
(3) Notes "
(4) Inventory & Avg. Selling Prices
(5) Fixed Assets.
(6) Machinery and Equipment details.
(7) Capital Stock.
(8) Notes payable
2283 (9) Bonds.
(10) Trade Acceptances
(11) Account payable
(12) Surplus Account.
(13) Office pay Roll and organization.
(14) Selling Organization.
(15) File Insurance.
(16) Casualty Insurance.
(17) Taxes.
(18) Killing Results.

I find that the local business men are very proud of their leading industry—the packing house, and believe it will continue to have the good will of the community, especially so, if the plant is enlarged.

It seems to me the vital problem is not so much the availability of live stock in sufficient quantity, but rather the necessity of grading up the king of stock now being raised.

That, of course, is a matter of education in which we must do our part.

Trust this report satisfactory for the purpose.

O. C. E. MATTHIES

June 1st, 1917.

P. S.

All of the officials were on the job but Mr. Brooks, who was attending his daughters commencement exercises.

2284 Cash

Verified as O. K.

Citizens Bank	$ 3106.60
1st. Nat'l	4975.92
Moultrie Banking Co.	10226.54
4th Nat'l—Macon	37.07
Atlanta Nat'l	10657.00
Petty Cash—Overdrawn	5.76
	$28997.37

2285 Accounts Receivable

The Customers Ledgers represent the following outstandings as at 4/30/1917

Ledger #1 A—L	$33147.93
" 2 M—Z	27014.05
Macon Accounts	4635.28
Atlanta Accounts	18268.74
Total	$83066.00
The Controlling Acct. in Gen'l Ledger and which is represented on Balance Sheet, shows	86772.73
Excess in Assets	$ 3706.73

The present Auditor (R. N. Hall) states that when he came with the Company last Sept. the accounts were in deplorable shape: in fact the conditions were such that it was impossible to reconcile the Customers Ledgers with the Controlling Acct.

The $83066.00 of Accounts are in good shape. Have scrutinized each of the 600/700 open accounts and consider them worth 99c on the dollar.

2286 Notes Receivable

Applying on Mdse	$2213.55
" " Stock Subscriptions	3838.70
	$6052.25
As per A & L Stmt	6092.70
	4045

Claim they overlooked writing this off.

Of the notes on stock subscriptions they consider $794.50 uncollectible (see sheet attchd items marked with an x) and $900.00 as doubtful (see item marked?)

2287 Inventory

Comparison of the last three inventories show:

Mar. 3rd	2,188,500#	averaging	14.40 per cwt.
" 31st	1,975,300#	"	15.68 " "
Apr. 30th.	1,615,500#	"	17.10 " "

Which is in line with market advances during this period.

I checked the quantities in the cellers with the lot records and believe the D. S. meats will ship out with an average.

Values compared with selling prices show that the inventory averages about ½c above net selling prices. See notation on Surplus Stmt. (#12.)

2288 Details of Fixed Assets. (Plant Values)

Land 13.9 Acrs		$ 1648.75
Buildings; 1st Section	55063.04	
2nd "	50483.34	105546.38
Machinery & Equipment		38221.20
Artesian Well 565' Deep		2285.40
Septic Tank (at sewer)		175.00
Car Equipment—6 cars (Old Swift Cars)		2424.40
Office Furniture & Fixtures		1970.95
Total		152272.08

Above are strictly book values, no depreciation having been applied. However, believe that the item of depreciation is offset by increase in values of construction costs.

Mr. Barnet will report on appraised values of plant.
Will get some details of the larger items in Mchry & Eqpmt Acct for next report.

2289 MACHINERY & EQUIPMENT

Itemization of the larger units:			
Refrigeration:	York Ice Machine	8138.58	
	Ammonia Lines	4638.13	
	Drip Pans	1026.00	13802.71
Engine Room:	Boilers	1500.00	
	Engine	985.00	2485.00
Elect. Eqpmt:	Dynamo, Motors, Etc.		2051.00
Elevator:	Otis		1400.00
Tank & Lard Room:			4784.00
Vats:	Stationary	1655.00	
	S. P. Curing	894.60	2549.60
Hog Scraper		1200.00	
" Hoist		225.00	
Misel. Hog Killing		917.50	2342.50
			$29414.81

2290 Capital Stock $97020.00 (adjmt, pending)

Shares	
30	Bonus to C. L. Brooks, Mgr. (part of remuneration for services or 3-yr contract)
873	Cash—Paid in full.
903	Certificates issued
93	Sold on contracts—not completed
996	
34	Of the contract purchases it is estimated that 34 shares will not be taken up.
962	Probable number to be taken up—$96,200.

2291 Notes Payable

Citizens	$18,000.
Moultrie Banking Co.	39,000.
1st Nat'l	15,500.
Atlanta Nat'l	175,000.
	$247,500
8% Local Citizens (5 yr) Secured by directors individually for bldg addition	50,000.
Swift Transp. Co. 6 Refr. Cars	
2424.40	
Paid 1980.00	
Bal	444.40
Grand Total	$297944.40
Taken up on books	290944.40
Books short	$ 7000.00

explained as being the result of failing to take up renewals.

Books have been out of balance since Sept. 1916.
Bank Certification Stmts. attached.
See special sheet reporting on bonds.

2292 Bonds.

Denomination	$50.00	
Issued	100	Amt. $50,000.00
Held by: Moultrie Bank Co.		29,500.
Citizens Bank		11,000
1st Nat'l		9,500.
		$50,000.

These used as collateral only to secure notes held by the banks.
I saw the acknowledgements furnished by the banks.

2293 **Trade Acceptances:**

Held by: Moultrie Banking Co.	$23,821.19
Citizens Bank	39,227,42
1st. Nat'l	.....
	$63,048.61

These represent drafts drawn by Live Stock buyer against himself.

This indebtedness all paid up now.

2294 **Accounts Payable—May 1st 1917**

Albany Mill Supply Co.	$ 10.51
Arbuckle Bros.	65.07
Arrow Boiler Compound Co	33.30
Brecht Company.	409.50
Cash Drug Store.	1.00
Cincinnati Butchers Supply Company	7.50
Colonial Salt Company	.....
Colquitt County Cooperage Company	613.90
Cotton States Belting Supply Company	41.36
Florida Woodenware Co.	541.00
Floridin Company.	5.32
Ford J. B. Co.	112.00
Fairbanks Company.	114.40
Garlock Packing Company.	30.09
Gulf Refining Co.	31.00
Hall Hardware Co.	153.73
Harper & Clark.	741.98
Herald Publishing Co.	102.03
Horkan, G. A.	54.27
Home Rubber Company.	4.40
Jarrard Well Company.	1814.05
Lamb & Tilden.	30.00
Marshall W. J. & Company	2309.81
Miller T. R. Mills Co	20.28
Morrison R. M.	7.40
Moultrie Cotton Mills.	1071.09
Moultrie Ice & Cold Storage Co.	290.88
Moultrie Machine & Foundry Company	7.60
Moultrie Grocery Company.	92.80
National Paper Co.	926.45
Observer Publishing Co.	4.00

Remington Typewriter Co.	66.50
Riverside Mfg. Co.	243.39
Stein Hirsch & Co	32.88
Savannah Supply Co.	33.02
Stokes Robbenberry Co.	318.20
Standard Oil Company.	4.60
Southern Belting Co.	53.00
Valvoline Oil Company.	102.12
Western Electric Co.	57.40
Willis Grocery Co.	3.85
York Mfg. Company.	15.55
	$10578.13
Credits—	
Helena Grocery Co. 6.87	
Margaret Coal Co. 201.60	
Sou Const. Co. 15.55	224.02
	$10354.11

2295 Surplus Acct.

Results from date of beginning of operations (12/14—1914) to 11/1-1916	$19,935.99
Operating Results Dec. 1916	13,450.43
" " Jan. & Feb. 1917	19,742.21
" " Mar.	20,166.01
" " Apr.	18,876.15
Total, as per Balance Sheet	$92,170.99
Should deduct fictitious Accts. Receivable	3,706.73
	$88,464.26
Had depreciation been provided for at customary rates, surplus would reduce	11,000.00
	$77,464.26
Estimating Inventory as valued ½c lb. too high	8,000.00
	69,464.26
Notes Payable renewed and not booked	7,000.00
	) $62,464.26
Net value in Surplus—per share 962	)
	$ 65.00

2296 Office Pay Roll

W. C. Verren, President—	$3000.00 per year		
C. L. Brooks, Manager—	3500.00 " "		($1000. of this pd. in stock)
C. E. Hurst, Secretary—	2400.00 " "		(Acts as credit and cashier man)
*R. W. Hall, Auditor—	1800.00 " "		
Chas. DuBignon Bookkeeper—	1200.00 " "		
E. R. Bryan Invoice Clerk—	900.00 " "		
H. B. Beverly " "	720.00 " "		
Mrs. E. R. Bryan, Stenographer	600.00 " "		
T. P. Stoltenborg Supt.	1920.00 " "		(formerly with Albert Le Pkg. Co.
C. Jarman, Time Keeper, Etc.	720.00 " "		
	$16760.00		

Consider the help competent but they need "tuning up."
None of the help bonded

2297 Selling Organization.

Have no force of Salesmen.

Sales handled through brokers

Commission rates allowed are:

Sausage	1c lb.
Pigs feet & Fresh meats	½c lb.
Cured "	2½%

On 5/1 commission rate on cured meats reduced from 2½% to 2%. Our avg. rate on cured meats 2% or about ½c lb.

The thing most needed at Moultrie Packing Co. is a man in the capacity of a Sales Manager. As it now is, they trust too much to pot-luck.

---

*Do not think this Man will stick. If we take over the business it would be advisable to replace Hall with a practical S & Co. trained departmental men. Hall is anxious to go to So. America.

2298 **Fire Insurance**

Carried on:	Machinery	25,000	
	Tools & Supplies	3,000	
	Office F. & Fixt.	500	
	Stock Yards & Pens	3,000	
	Live Stock	3,000	
	Meats	30,000	X covers only 11% of Invy.
		$64,500	value

Carried on:	Firemans Fund	10,750
	St. Paul Fire & Marine	10,750
	Penn Fire	10,750
	American	12,250
	Hartford	10,000
	N. B. & M.	10,000
		$64,500

2299 **Casualty Insurance**

Carry 12000.00 @ 1.08 rate
Adjustment annually on Pay Roll

2300 Taxes: Assessment $60,000.00

State & County rate	1.65	990.
Corporation Tax		30.
Total		1020

No City Taxes account being outside of city limits

2301 (Approximate)

Summary of (Values & Costs) in Hog Killing Operations

	% of Live Wt.	Value @ Apr. Avg. Selling prices		
Hams	8	19¼	1.64	
Shoulders	8	16¾	1.34	
Side Meats	44	19½	8.58	
Lard	10	21	2.10	
	70		/ 13.66	
100# Dressed (avg. Carcass)			19.51	
Add small offal & By Products			.30	
			19.81	
Less Expense: Plant operating		1.30		
Overhead		.40		
Total			1.70	
Value per animal			/ 18.11	
" " Live Cwt. 143# avg.			/ 12.66	
Live Cost per Cwt			11.43	
"put down" margin			1.23	per Live Cwt.
	or		1.75	" Hog

MOULTRIE PACKING CO.
MOULTRIE, GA.

M M STANALAND
BOX 455
ATLANTA GA

Order Received 10 26 17
Order Shipped
Broker
Ship to
At
Via CAR PAID When ATL SWIFT & CO

Consignment #23

QUANTITY ORDERED PIECES	QUANTITY ORDERED POUNDS	ORDER NO. 4190	SHIPPING NO.	✓	PIECES OR PACKAGES	NET WEIGHT SHIPPED	PRICE	AMOUNT
2		TRCS PURE PLAN LARD		✓	2	[illegible]	✓	
50	20#	PL PURE PLAN LARD		✓	50	1000	✓	

Comm. Ex. 58

Docket 453 Atlanta Ga.
Com. Ex 58
Wit - Stana
3/2/21
L.C.A.

~~Federal Trade~~
INTERSTATE COMMERCE COMMISSION
Docket No. 453 Exhibit No. 58
Witness Stanaland
Complainants / Defendants
Date 3-2-21
Steno. Alge

2303 Moultrie Packing Company

Pork Packers

Moultrie, Georgia

May 22, 1917.

Docket No. 453
Exhibit No. 59
Date March 2, 1921
Witness Stanaland

Mr. M. M. Stanaland,
Atlanta, Ga.

Dear Sir:—

I wrote you on 16th. inst. advising you that I thought that I could sell your share of stock in the Moultrie Packing Co., for $125.00. You have not answered this letter. For your information will say that a large Wester packer has made a conditional offer of $125.00 per share for all of our stock, and will advise us positively on or before June 2nd, whether or not he will take it. I have power of attorney already for about 95% of the stock, indeed have power of attorney from every man who has been seen. I would advise that you agree to accept same, and sign power of attorney, which I am enclosing and return to me by first mail.

For your information, I will state that the party with whom we are on a trade, expects for you to handle our products as heretofore. I therefore think it important that you sign up at once. Please let me hear from you promptly.

Yours truly,

(Signed) W. C. VEREEN,
President

wcv/dd

ANDALUSIA PACKING COMPANY

UNDER GOVERNMENT INSPECTION

ANDALUSIA, ALA. 4/27/17

No. 7172

BROKER S.O.

ORDER RECEIVED 4/27/17

DATE SHIPPED 4/27/17

VIA

CAR

SOLD TO S. L. SIMMONS,

SHIPPED TO COLUMBUS, GA.

ALL BILLS DUE AND PAYABLE AT OUR OFFICE ON OR BEFORE MONDAY FOLLOWING DATE OF SALE

ORDER NO. 7979 B/L NO. 4719

	SHIPPED		PRICE	AMOUNT
	PIECES	POUNDS		
SPARE RIBS		30	15	4.50
BONES		60	6	3.60
TAILS		OUT		
EARS		18	8	1.44
				9.54

Federal Trade

INTERSTATE COMMERCE COMMISSION

Docket No. 453 Exhibit No. 60

Witness

Complainants / Defendants

Date 2/2/21

Steno.

Comm. Ex. 60

ANDALUSIA PACKING COMPANY

UNDER GOVERNMENT INSPECTION

ANDALUSIA, ALA. 4/6/17

No.

SOLD TO S. L. SIMMONS,

CHARGED TO COLUMBUS, GA.

DATE SHIPPED 4/6/17.

VIA XPRESS.

CAR

ALL BILLS DUE AND PAYABLE AT OUR OFFICE ON OR BEFORE MONDAY FOLLOWING DATE OF SALE

ORDER No. 7340 B/L No. 4274	SHIPPED PIECES	SHIPPED POUNDS	PRICE	AMOUNT
SPARE RIBS		OUT		
BONES		OUT		
TAILS		OUT		
EARS		OUT		
PIGS	5	344	14½	49.88
TRIMMINGS		OUT		

INTERSTATE COMMERCE COMMISSION
Docket No. 459 Exhibit No. 61
Witness Simmons
Complainants Date 3/2/21
Defendants Steno. Calg Ll

Comm. Ex. 61

1339

2305

Tabulation of Products

Sold to S. L. Simmons, Columbus, Georgia,
By Swift & Co.

(Exhibits 62-65 inclusive)

Date	Product	Quantity	Price	Amount
5-12-17	Pork Loins	12 lbs.	25	3.00
10-9-17	Pork Trimmings	50 "	17½	8.75
10-9-17	Pork Fats	52½	26	13.65
10-9-17	Pork Tails	21	15	3.15
10-9-17	Pork Shoulders	25¾	26	6.70
10-15-17	Sp. Ribs	25	20	5.00
10-15-17	Pork Shoulders	55	26½	14.58
10-15-17	Pork Hams	54	28½	15.39
	(Shipped from Moultrie)			
10-19-17	Pork Shoulders	103	26½	27.30
10-19-17	Pork Hams	35	28	9.80
10-19-17	Pork Trimmings	100	26½	26.50

2306

Andalusia Packing Company
Pork Packers
Andalusia, Alabama

April 11th,
1917.

Docket No. 453
Exhibit No. 66
Date March 2, 1921.
Witness Simmons

S. L. Simmons,
Columbus, Ga.

Dear Sir:

We regret that we will be unable to fill any orders for Fresh Pork Cuts this week as we have already booked orders for more than we can take care of.

In this connection we wish to thank you for the business with which you have favored us and hope that we may be permitted to furnish you with part of your requirements from time to time.

Yours very truly,
ANDALUSIA PACKING COMPANY.
Per THOS G. CONNER
Mgr.

tgc/b

ion's
it No. 67. 2307

Moultrie Packing Company
Pork Packers
Moultrie, Georgia

June 18, 1917.
Docket No. 453
Exhibit No. 67
Date March 2, 1921
Witness Stanaland

Mr. M. M. Stanaland,
Atlanta, Ga.
Dear Sir:—

Replying to your favor of 15th inst., will say that your stock certificate has been received by Moultrie Banking Company, and will be forwarded with all the other stock certificates, in a few days, to Chicago for collection. As soon as remittance is received, bank will forward you check.

Whenever the time comes, I shall of course take pleasure in writing you the letter which I advised you I would write. It is probable that we will not turn over the plant to Swift & Co., for possibly ten days yet. Some of their men are already here.

Our advice is that they expect to continue our present selling arrangement for an indefinite period. Will keep you posted as to developments.

Yours very truly,
(Signed) W. C. VEREEN,
President

wcv/dd

on's
No. 68. 2308

Moultrie Packing Company
Pork Packers
Moultrie, Georgia

July 12th, 1917.
Docket No. 453
Exhibit No. 68
Date March 2, 1921
Witness Stanaland

Mr. Stanaland,
Atlanta, Ga.
Dear Sir:—

Replying to your letter of July 9th, I wish to advise that the account of W. H. Bledsoe & Company now has a credit of $11.05 on our ledgers, also that the account of Cassells and Fleming has remittance of $324.08 is paid short $2.88

and have no way of knowing what this is. Will you please advise us?

Yours respectfully,
MOULTRIE PACKING COMPANY.
(Signed) C. W. WALLOW.

2309

Moultrie Packing Company
Pork Packers
Moultrie, Georgia,

Commission Exhibit

Oct. 22, 1917.

M. M. Stanaland Co.,
Atlanta, Ga.

Gentlemen:

You are no doubt familiar with Swift & Co., has purchased Moultrie Packing Company, also familiar that we have a Branch House in Atlanta and have a large sales force working the City of Atlanta and vicinity; in view of an outlet of this kind also the expense of maintaining it from the Swift & Co. standpoint, it is going to be necessary for us to cancel our Brokerage arrangements with you on Oct. 29th. We would like for you to take care of all collections and also dispose of the stock you have on hand.

Only in view of the fact that we have a large sales force which is the reason why we are cancelling our arrangements with you, as our relationship has been very agreeable while you were handling our account.

We kindly ask that you acknowledge receipt, advising us in reference to the collections, also stock on hand.

Yours respectfully,
F. A. L.
MOULTRIE PACKING COMPANY.

Docket No. 453 Ex. No. 69
Witness: Stanaland
3-2-21.

2310

Moultrie Packing Company
Pork Packers
Moultrie, Georgia.

Commission Exhibit

Jan. 22, 1917.

Mr. M. M. Stanaland,
Atlanta, Ga.

Dear Sir:

Your letter of 20th inst., relative to prices on lard received. We have figured over it and have decided to let you go

ahead and meet competition. Prices on lard, you know, are rather stiff for some days past, and we want you to watch same closely and follow any advance.

Lets see now what sort of sales you make. We are going to spend money on advertising this lard, and we want to make it back.

Yours truly,
MOULTRIE PACKING COMPANY,
W. C. VEREEN,
President.

Docket No. 453—Ex. No. 70
Witness: Stanaland
3-2-21.

on's No. 71. 2311

Andalusia Packing Company
Pork Packers
Andalusia, Alabama, July 2, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlemen:

On receipt of this letter you will please make out and forward to this office a complete list of all outstanding contracts that you have for our accounts, and an itimized statement of balance due on them.

Very truly,
ANDALUSIA PACKING CO.,
THOS. G. CONNER,
Mgr.

Docket No. 453—Ex. 71
Witness: Miller
3-3-21.

on's No. 72. 2312

Andalusia Packing Company
Pork Packers
Andalusia, Alabama, July 10, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

Yours of the 7th with reference to blank statements. If you have on hand a sufficient supply to meet your requirements for the next 10 days, you will please hold this matter in abeyance until we advise further.

We have not written you concerning deal which is now pending between Swift & Co. of Chicago and ourselves, which

contemplates the sale of our plant to them. Our reason for not having done so is because there was a degree of uncertainty in the situation which would make any advice which we might have given of little value. It seems now that they will probably close with us, in which event, different arrangements for the sale of our products will doubtless be made. We will write you further as to this matter as soon as we are in position to make definite statements. In the meantime, we wish to request that you will hold what we have herewith written you in strict confidence.

Yours very truly,
ANDALUSIA PACKING COMPANY
THOS. G. CONNER, *Mgr.*

Docket No. 453—Ex. 72
Witness: Miller
3-3-21.

2313 Western Union Telegram Commissi Exhibit

32K KD 42 Blue

Andalusia Ala 405 PM July 14-17.

The J W Clarke Co
Atlanta Ga

Make up complete inventory of our products on hand with you at close of business today and mail to us tonight Be sure to mail us every invoice covering sales made today and prior to today that are not included in inventory

ANDALUSIA PACKING CO.
415 PM

Docket No. 453—Ex. 73
Witness: Miller
3-3-21.

2314 Andalusia Packing Company Commissi Exhibit
Pork Packers
Andalusia, Alabama, July 16, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

Replying to yours of the 12th with reference to rumored sale of this plant, we have already written you on this subject and there is nothing further to report at this time. The whole matter is still in the air. As soon as we have any defi-

nite information, we will be pleased to communicate with you.

It is possible that even though party you mentioned may buy the plant, they may wish us to handle the account in the future as we have in the past.

Yours very truly,
ANDALUSIA PACKING COMPANY
THOS. G. CONNER, *Mgr.*

Docket No. 453—Ex. 74
Witness: Miller
3-3-21.

Commission's Exhibit No. 75.

2315 Andalusia Packing Company
Pork Packers
Andalusia, Alabama, July 19, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlemen:

In conformity with request of Mr. Davis, I am writing to advise that you will please continue to report sales in future as you have in past, until further notice from us.

We hope that you are doing all that you can to bring up collection on our accounts, as we are very desirous of reducing amount which we are carrying on our books, as we feel that we should in consideration of the fact that our sales at this time are much less than they have been for the last several months.

Yours very truly,
ANDALUSIA PACKING COMPANY
Per: THOS. G. CONNER, *Mgr.*

Docket No. 453—Ex. 75
Witness: Miller
3-3-21.

Commission's Exhibit No. 76.

2316 Andalusia Packing Company
Pork Packers
Andalusia, Alabama, July 25, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

Yours of the 20th with reference to sale of plant. This has been closed but so far, as the general public is concerned, there will be no difference in management, and as far as we can without conflicting with branch houses, we do not wish

to sever entirely our sales connections. We will probably ask you to continue, to some degree at least, to handle our products. We only request that you do not sacrifice sales and that you do not break the market.

In this connection, we wish to advise that we are over loaded on Sweet Pickeled Hams, and we understand that Moultrie is in same condition; therefore Swift & Co. in Atlanta will probably not be able to handle any of our Hams at this time. We have decided, therefore to ask you to endeavor to make sale for us of car load Sweet Pickeled Regular Hams, 8/12 at 19 3/8c, and Sweet Pickeled Skinned Hams, 12/16 at 20 3/8.

We shall also ask that you continue to push collection so as to reduce balance that we are carrying.

When you have closed out lot of Regular and Skinned Hams returned by Turnell Trading Co., please advise us amount lost on sale.

Respectfully yours,
ANDALUSIA PACKING CO.
Per. THOS. G. CONNER

Docket No. 453—Ex. 76
Witness: Miller
3-3-21.

2317 Western Union Telegram

Commission Exhibit

34 K CN 14

Andalusia Ala 3 PM July 31 1917

J W Clarke Co
Atlanta Ga

1917 Jul 31 PM 3 18

Answering Receipts still too light Be able ship you car fresh pork this week

ANDALUSIA PKG CO
315 PM

Docket No. 453—Ex. 77
Witness: Miller
3-3-21

2318 Andalusia Packing Company
Pork Packers

Commission Exhibit

Andalusia, Alabama
August 10, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

Replying to yours of August 9th, in re: Price of Lard, we

are unwilling to meet quotations of Moultrie Packing Company unless they change materially from figure which you named.

Our views are that lard will go higher and while we do not wish you to hold lard in stock until it becomes old, unless there is some special reason why you should do so, we prefer that you hold quotation price named.

For your information, branch house selling price on pure lard, as quoted by Chicago, should be 23c. It is our plan to ultimately work to this level.

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per THOS G. CONNER.

Mgr's office
TGC-W
Docket No. 453—Ex. 78
Witness: Miller
3-3-21.

ion's
t No. 79.

2319 Andalusia Packing Company
Pork Packers
Andalusia, Alabama,
August 15, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

We are sending you tonight under separate cover supply of new collection reports, which you will please use in place of those which are already in your possession.

In filling these out, where customer has paid a number of invoices, you might list in the inner column in detail all invoices, and extend into total column total amount collected from each customer.

Thanking you in advance, we are

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per. C. M. W.

CMW-W
Docket No. 453—Ex. 79.
Witness: Miller
3-3-21.

2320 Andalusia Packing Company Commission's Exhibit No.
Pork Packers
Andalusia, Alabama, August 17, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

With reference to that part of your letter of August 16th, inquiring about fresh meat, beg to advise that is will be several weeks yet before we will be in position to make any shipments of any note. Our local demands are fine and we are receiving very few hogs at this time. We will take up question of ham prices and endeavor to move some within next few days.

With reference to bids on requirements of City of Atlanta, Quartermasters Department, we will probably not be in position to make any attractive bids on anything except hams. We note that they require choicest sugar-cured hams, and are fearful lest there should be some complaint on quality if we should sell them.

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per: THOS G. CONNER.

Mgr's office
TGC-W
Docket No. 453—Ex. 80.
Witness: Miller
3-3-21.

2321 Western Union Telegram Commission's Exhibit No.

4 K SI 10

Andalusia Ala 825 AM Aug 21-17.
1917 Aug 21 AM 9 17

J W Clarke Co
Atlanta Ga

No fresh meat this week Shipping smoked hams by express

ANDALUSIA PACKING CO
914 AM

Docket No. 453—Ex. 81
Witness: Miller
3-3-21.

ission's ibit No. 82.

2322

Andalusia Packing Company
Pork Packers
Andalusia, Alabama.
August 21, 1917.

The J. W. Clarke Co.,
Atlanta, Ga.
Gentlemen:

We will undoubtedly have more or less correspondence with you from now on with regards to collections, and various other miscellaneous letters, and to help us for further references, we would be glad to have each letter deal with one subject.

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per C. B. C.

CBC*W
Docket No. 453—Ex. 82.
Witness: Miller
3-3-21.

ission's bit No. 83.

2323

Andalusia Packing Company
Packers
Andalusia, Alabama
August 25, 1917

The J. W. Clarke Co.,
Atlanta, Ga.
Gentlemen:

Since this concern has changed hands we have had more or less correspondence with you in connection with old balances, claims, and one thing and another. It seems that we have made very little headway towards cleaning up items of this nature. As you probably know, it will be the practice of this company to follow very closely accounts due and claims, as it has always been our custom to keep this work up to date.

In going over accounts which you handle for us, we have no way of determining whether they are on a weekly, ten day or monthly basis, and for that reason we cannot judge whether or not some of the accounts should be paid at this time. We would ask that you kindly compile a list of your customers as shown on our books, showing after each one terms that your salesman made them. We will be pleased to have this forwarded to us at your earliest convenience.

We are sending you today weekly statements of accounts, and we are calling your attention on a separate sheet of paper to a good many accounts which we wish disposed of immediately, either collected, written off to suspense, or claim filed.

No doubt, you have advised us on some of these items; however, during the rush here, papers have been mislaid, and probably it will be better to start at this time all over again.

We believe that we sent you some claim forms. On any of these items that you have not made credit slips on, please fill out claim blanks. It will not be necessary to answer every question that is asked on these blanks, as undoubtedly some of them are so old that this would be impossible.

2324 At any rate, we would like to hear from you on each item which we give special mention. We realize that this will take quite a little work at this time; however, when we do get these accounts running smoothly, it will be much easier for both of us to transact business.

We wish to thank you in advance for your good attention to this matter and we would be pleased to hear from you at a very early date.

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per—C. B. C.

Accounting Dept.
CBC-W
Docket No. 453—Ex. 83.
Witness: Miller
3-3-21.

2325 Western Union Telegram

Commission's Exhibit No.

41 K RU 10

Andalusia Ala 219 PM Sept 11 1917

The J W Clark Co
Atlanta Ga

Answering regret cannot ship car meat this week as requested

ANDALUSIA PACKING Co
225 PM

Docket No. 453—Ex. 84.
Witness: Miller
3-3-21.

For Week Ending 9-8 1917

THE J. W. CLARKE CO.

FRESH MEATS

Small Pigs	20[2]
Pork Loins	26[2]
Boston Butts	....
Pork Trimmings	....
Spare Ribs	17[2]
Neck Bones	7
Pork Tenderloins	....
Fresh Hams, 8-10	22[2]
Fresh Hams, 10-12	22[2]
Fresh Hams, 12-14	22[2]
Fresh Skinned Hams, 12-14	22[2]
Fresh Skinned Shoulders	20[2]
Fresh Pig Tails	12
Fresh Pig Snouts	10
Fresh Pig Ears	8
Fresh Pig Feet, per doz	35
Fresh Hog Tongues	....

SMOKED COUNTRY STYLE, ALL PORK SAUSAGE

10 lb. Cartons	....
25 lb. Boxes	....
50 lb. Boxes	....
100 lb. Boxes	17[2]
Fresh Pork Sausage	19[2]

DRESSED BEEF

Dressed Beef, Good	12[2]-13[2]
Dressed Beef, Fair	11[2]-12[2]
Beef Front	11[2]
Beef Hinds	16
Beef Tongues	19
Beef Livers	12

DRY SALT MEATS

D. S. Rib Bellies, 15-20	....
D. S. Rib Bellies, 20-25	....
D. S. Rib Bellies, 25-30	27[4]
D. S. Rib Bellies, 30-35	....
D. S. Clear Bellies, 15-20	....
D. S. Clear Bellies, 20-25	27½
D. S. Rough Ribs, 20-25	....
D. S. Rough Ribs, 25-30	....
D. S. Rough Ribs, 30-35	....
D. S. Rough Ribs, 35-40	....
D. S. Rib Backs, 15-20	....
D. S. Rib Backs, 20-25	....
D. S. Rib Backs, 25-30	....
D. S. Fat Backs, 10-12	19[2]
D. S. Fat Backs, 14-16	....
D. S. Regular Plates	23[4]
D. S. Shoulders	....

SMOKED SUGAR CURED MEATS

Regular Smoked Hams, 6-8	....
Regular Smoked Hams, 8-10	....
Regular Smoked Hams, 10-14	23[2]
Smoked Skinned Hams	24[2]
Picnic Hams, 6-8	....
Picnic Hams, 8-10	....
Picnic Hams, 10-12	....
Breakfast Bacon, 4-6	....
Breakfast Bacon, 6-8	....
Breakfast Bacon, 8-10	....
Boneless Butts, Smoked	....

All sugar cured meats wrapped in parchment paper.

SMOKED MEATS, PLAIN

Smoked Rib Bellies, 15-20	....
Smoked Rib Bellies, 20-25	....
Smoked Rib Bellies, 25-30	29½
Smoked Rough Ribs, 20-25	....
Smoked Rough Ribs, 25-30	....
Smoked Rough Ribs, 30-35	....
Smoked Rough Ribs, 35-40	....
Smoked Ham Butts	....
Smoked Shoulders	....
" Clear Bellies	30[4]

PURE LARD

Tierce's Apx. 375 lb	25[2]
80 lb. Tubs	....
60 lb. Tubs	25½
20 lb. Tubs	26
50 lb. Tins, 1 in case	12.75
10 lb. Tins, 6 in case	15.30
5 lb. Tins, 12 in case	15.30
3 lb. Tins, 20 in case	15.30

COOKED AND SPICE PICKLE PIG FEET, SNOUTS, TONGUES

Pig Feet, 1-8 bbl	1.35
Pig Feet, 1-4 bbl	....
Pig Feet, 1-2 bbl	....
Snouts, 1-8 bbl	....
Snouts, 1-4 bbl	....
Snouts, 1-2 bbl	....
Tongues, 1-8 bbl	....
Tongues, 1-4 bbl	....
Tongues, 1-2 bbl	....
Beef " 3D & down	20 cts.
	....
	....

2326 Comm. Ex. 85

ANDALUSIA PACKING COMPANY
Andalusia, Alabama

ALABAMA BRANDS COVINGTON

HAMS
LARD

BACON
SAUSAGE

GROWN, KILLED AND MANUFATCURED IN THE SOUTH
SOLD EVERYWHERE

WHY NOT PATRONIZE HOME INDUSTRY?

ALL OUR PRODUCTS ARE U. S. INSPECTED AND PASSED

Ask us for prices on any packing house product not shown herein.

FEDERAL TRADE COMMISSION
Docket No. 453 Exhibit No. 85
Witness Miller
{Complainants Date 3-2-21
{Defendants Steno. Alger

ission's ibit No. 86. 2327

Andalusia Packing Company
Packers
Andalusia, Alabama

September 13, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlemen:

Note in looking over consignment closings with your people that they are in every case showing substantial loss. We are invoicing products to you on a strictly f.o.b. Andalusia basis, the same as we do any of the Swift branch houses or with other connections, and you should aim in every case to get at least freight and the amount of your commission over invoiced prices. Do you not believe it is possible for you to work on this basis as an absolute minimum in selling products?

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per: Geo. D. R.

GDR/AR
Mgr. Office
Docket No. 453—Ex. 86.
Witness: Miller
3-3-21.

ission's ibit No. 87. 2328

Andalusia Packing Company
Packers
Andalusia, Alabama.

September 21, 1917.

The J. W. Clark Co.,
Atlanta, Ga.

Gentlemen:

Replying to your wire today.

Order No. 61 of the 12th, we are shipping you tomorrow 2000# each fresh pork loins, shoulders, and hams; 50 shipper pigs; 500 each smoked regular and skinned hams, plain; ten 60# tubs pure lard. Very best we can do at this time.

ANDALUSIA PACKING COMPANY
Per. G. D. R.
Mgr. Office.

Docket No. 453—Ex. 87
Witness: Miller
3-3-21.

2329 Western Union Telegram

Commission's Exhibit No.

25 K RU 8

Andalusia Ala 215 PM Sept 19 1917

The K W Clarke Co
Atlanta Ga

Cannot ship
Answering Phosphor this week Cannot supply local demand

ANDALUSIA PACKING CO
221 PM

Docket No. 453—Ex. 88
Witness: Miller
3-3-21.

2330 COMM. EX. 89.

Commission's Exhibit No.

Andalusia Packing Company
Packers
Andalusia, Alabama

September 22, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlemen:

Answering your letter of the 18th.

Differences in the invoicing of the product shipped on the 8th and our list of the same date is due to one half cent advance going into effect immediately after issue of that list which you evidently did not receive. Our idea of invoicing products shipped to you at an fob Andalusia price is to put you on the same basis of cost as the rest of our outlets, and it is only fair to us that you figure to secure over these prices at least the freight and your commission. This method of handling will always show results on every shipment and of course should not harm you in competing against any of your competitors. If we were to ship Swift & Company of Atlanta we would invoice them on the same basis, and in order for them to make a profit they would have to get freight and overhead over our invoiced price to avoid showing a loss to their house as they pay for the product outright.

It is true that our letter had reference to consignments shipped prior to the change of ownership, but as we have assumed the liabilities entailed by these consignments called

your attention to the fact, as we could not continue to make consignments to you and have them show the losses that the ones show under the previous management. Unless there is some other reason than you advance will continue to send you a weekly price list as to what we may expect to get for our products on a fob basis here.

2331 Awaiting reply,

ANDALUSIA PACKING CO.,
Per: GDR.
Mgr. Office.

Docket No. 453—Ex. 89.
Witness: Miller
3-3-21.

mission's
ibit No. 90.

2332 Adalusa Packing Company
Packers
Andalusa, Alabama
September 25, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlmen:

Answering your letter of the 22d.

Will be unable to make you a shipment of fresh pork cuts this week.

ANDALUSIA PACKING CO.
Per G. D. R.
Mgr. Office.

Docket No. 453 - Ex. 90.
Witness: Miller
3-3-21.

ission's
ibit No. 91.

2333 Andalusia Packing Company
Packers
Andualusia, Alabama.
September 29, 1917.

The J. W. Clark Company,
Atlanta, Ga.

Gentlemen:

Answering your letter of September 24th FOM.

Since writing this letter believe you will find Moultrie quotations on pure lard are in line with ours. Sample of the lard which we have seem being put out by Moultrie does not compare with ours. We have no control over their prices,

however, we feel justified in asking what we think our product worth.

ANDALUSIA PACKING COMPANY
Per

GDR/AR
Mgr. Office.
Docket No. 453 - Ex. 91.
Witness: Miller
3-3-21.

2334 Western Union Telegram Commission Exhibit N

34 K RU 11

Andalusia Ala 1159 AM Oct 4 1917

J W Clarke Co
Atlanta Ga

Answering Phosphor order of twenty seventh account not having sufficient assortment

ANDALUSIA PACKING Co
1220 PM

Docket No. 453 - Ex. 92
Witness: Miller
3-3-21

2335 Western Union Telegram Commission Exhibit N

52 KMJ 14 NL

Andalusia Ala Oct 8 1917

J W Clarke Co
Atlanta Ga

Answering hog receipts not sufficient take care local requirement will wire offerings whenever available

ANDALUSIA PACKING Co
757P

Docket No. 453 - Ex. 93
Witness: Miller
3-3-21.

ssion's bit No. 94. 2336

Andalusia Packing Company
Packers
Andalusia, Alabama.

October 12, 1917.

J. W. Clarke Co.,
Atlanta, Ga.

Gentlemen:

Reference Your Order 71.

We are still short of pure Lard and are cancelling above order.

We are unable to understand why you should make these sales, as you did of 24½c, in view of our letter written you August 23rd, wherein we advised you were oversold on Lard. We advised you again on September 12th and September 29th not to take orders, and we do not therefore, feel obligated to take care of orders for Lard taken after August 23rd, unless at full list price, plus freight and your commission.

In your letter of October 1st you called our attention to a contract which you made for our account with J. G. Cato for 5,000 lbs. regular Hams at 23c for delivery in thirty days, will you kindly attach copy of our confirmation of order for ready reference.

We are entirely out of regular hams and if we are obliged to take care of this order it will take practically our entire stock of skinned hams. We again reiterate that you must not sell for our account any products which you do not have in stock, or know positively is in transit.

Live stock receipts of all kinds still continue light and it will be some time before we will have our stock of cured meat replenished.

Awaiting reply.

Yours respectfully,
ANDALUSIA PACKING COMPANY
G. D. R.

GDR/HE
Mgr. Office
Docket No. 453—Ex. 94
Witness: Miller
3-3-21.

2337 Andalusia Packing Company
Packers
Andalusia, Alabama

Commission's Exhibit No.

October 15, 1917.

J. W. Clark Co.,
Atlanta, Ga.

Demands for our products through our regular outlets are so much in excess of our requirements, looks now as if it will be some little time before we are going to be able to make you regular shipments. Receipts of live stock still continue light, with prospects of their continuing so several weeks longer.

Wish to assure you that we have appreciated your support in the past. Am only giving you this information so you can make other advantageous arrangements to keep your customers supplied.

It is our intention of course to take care of the outstanding contracts which we have assumed, account of having sold products ahead for our account, but understand that you are not to make any other sales for our account except stock in transit or stock you have actually in the house.

Please acknowledge receipt.

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per: G. D. R.

GDR/HE
Mgr. Office
Docket No. 453—Ex. 95.
Witness: Miller
3-3-21.

ission's
ibit No. 96.

2338

Andalusia Packing Company
Packers
Andalusia, Alabama

Oct. 19, 1917.

The J. W. Clarke Co.,
Atlanta, Ga.

Gentlemen:

We are enclosing herewith statements form 771 of several accounts sold by you upon which we would be pleased to have an explanation of why not paid. You will recall that we sent you duplicates of our regular statements some time ago, you answering questions one, two and three. The ones which we are sending you now are the same as the others, only you keep the white one and return the yellow one with your notation at the top as to why slow.

We will be glad to have you give this your good attention as we are desirous of forwarding these on to Chicago at the earliest possible date.

Awaiting same, we are

Yours respectfully,
ANDALUSIA PACKING COMPANY
Per: C. B. C.

Acctg. Dept.
CBC:PW
Docket No. 453—Ex. 96.
Witness: Miller
3-3-21.

1361

Ex. 97

181

MB

DOCKET DIVISION FILE
F.T.C. v. Swift & Co.
File No. 9-1015-2-3

FEDERAL TRADE COMMISSION
WASHINGTON.

MEAT INVESTIGATION.

F. No. Sch 5 S. No. S 5

Mountain Packing Co

FOOD INVESTIGATION.

SPECIAL REPORT.

SLAUGHTERING AND MEAT PACKING.

SCHEDULE B.

STATISTICAL STATEMENT.

The information required by this report is ordered to be furnished pursuant to the power of the Commission under subdivision (b) of section 6 of the Federal Trade Commission Act.

This report must be mailed to the FEDERAL TRADE COMMISSION, WASHINGTON, D. C., on or before OCT 5, 1917.

PENALTIES.

Failure to mail this report within the time required will subject the corporation to a forfeiture of the sum of $100 for each and every day of the continuance of such failure. (Section 10, Federal Trade Commission Act.)

Any person who shall willfully make or cause to be made any false entry or statement of fact in this report shall be subject to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years or to both such fine and imprisonment. (Section 10, Federal Trade Commission Act.)

VERIFICATION.

The accuracy of any statement made in this report will be verified by the Commission in its discretion.

INTERSTATE COMMERCE COMMISSION
Docket No. Exhibit No. 97
Witness
Complainant Date
Defendant Stenographer

1303

RECEIVED Ex.97 181

2-3-4-5-6-7-8-9-10 OCT 8

SLAUGHTERING AND MEAT PACKING.—SPECIAL REPORT.

NOTE.—The word "company," wherever used in this schedule, means corporation, partnership, or individual, as the case may be.

(If additional sheets are necessary to furnish the information required by any of the following questions, they should be given the number of the question to which they apply and attached to this report.)

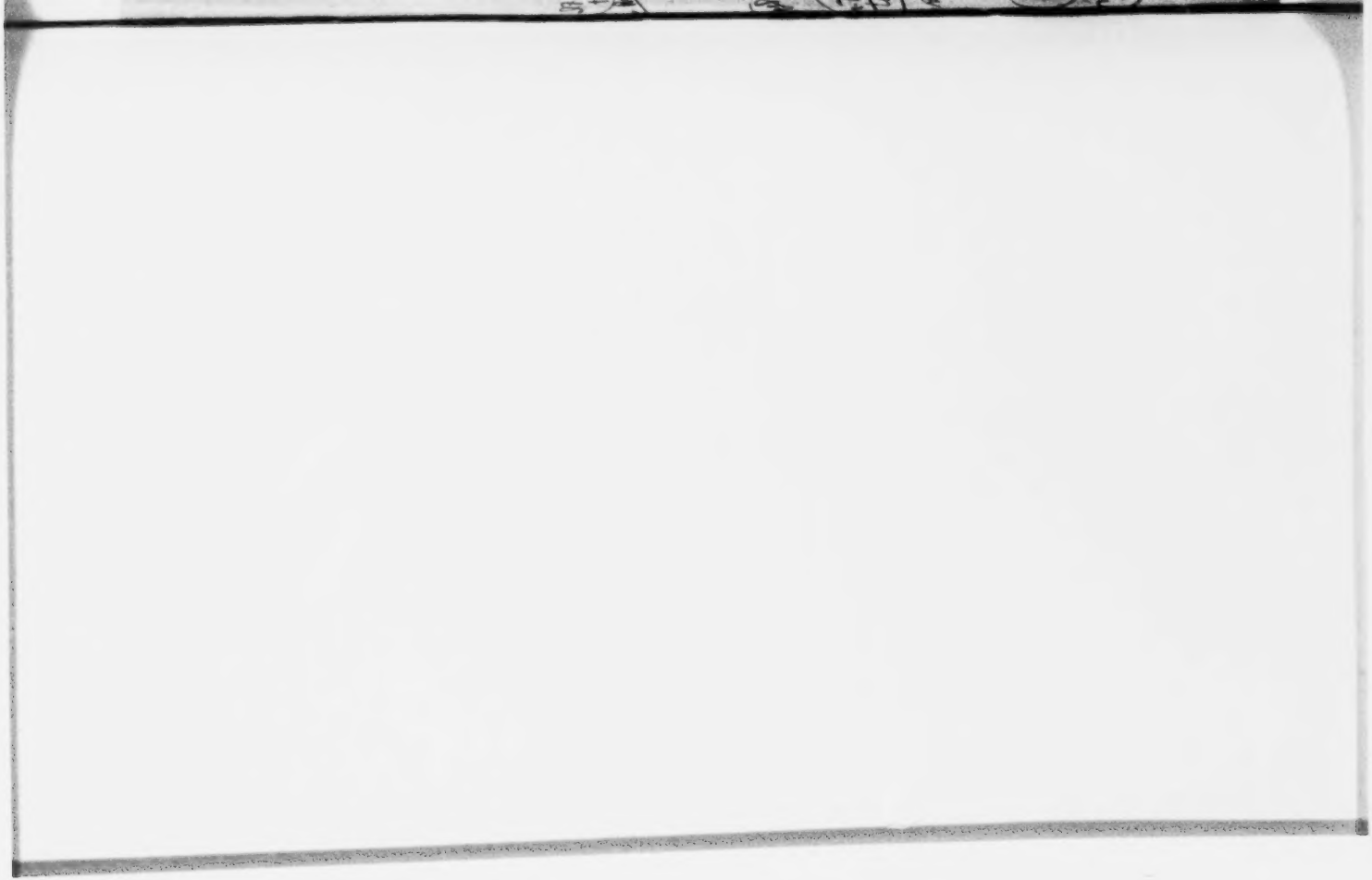
1. Name of company MOULTRIE PACKING CO.

2. Form of business organization (corporation, partnership, individual) Corporation

3. Principal business office Moultrie Ga

4. List all slaughtering plants operated by this company, or by any of its subsidiary or affiliated companies, with location, hourly slaughtering capacity, and, if leased, name and address of owner:

Name and location of plant.	Slaughtering capacity per hour.				If leased, name and address of owner.
	Cattle.	Calves.	Hogs.	Sheep.	
MOULTRIE PACKING CO., MOULTRIE, GA.	51	—	60	—	



1365

Ex.97

181

Name of company MOULTRIE PACKING CO.

Address MOULTRIE, GA.

6. Attach a statement to this report showing separately for each slaughtering plant operated by this company, or by any of its subsidiary or affiliated companies, the following statistics for the past five calendar years and for the first six months of 1917. (Give actual total numbers, quantities, and amounts, *not* average or per head figures.) If more than one plant is operated enter data for additional plants on separate sheets and attach.

LOCATION OF PLANT .....

ITEM.	CALENDAR YEAR.					Jan. 1 to June 30, 1917.
	1912.	1913.	1914.	1915.	1916.	
Dressed beef cattle:						
Number slaughtered			53	1629	701	901
Total live weight			51540	918691	404244	518976
Total live cost			201963	3705178	1907865	2520683
Total dressed weight			24739	442221	196333	252280
Pounds of carcass beef sold			22265	396748	176699	227052
Gross receipts from carcass beef[1]			819.83	29298.86	21747.91	22639.62
Other cattle:						
Number slaughtered						
Total live weight						
Total live cost				None		
Total dressed weight						
Calves:						
Number slaughtered						
Total live weight						
Total live cost				None		
Total dressed weight						
Pounds of veal sold						
Gross receipts from veal[1]						
Hogs:						
Number slaughtered			2032	32658	78125	42421
Total live weight			399410	3282710	10979615	6083074
Total live cost			2343458	17234236	92082162	572391.05
Total dressed weight			200598	21994415	7305506	3907909
Sheep and lambs:						
Number slaughtered						
Total live weight				None		
Total live cost						
Total dressed weight						

[1] Statement of gross receipts should not include discounts to customers.

1867

Ex. 97

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Name of company MOULTRIE PACKING CO.,

Address MOULTRIE, GA.

7. Quantity of lard, oleomargarine, butterine, lard compounds, and lard substitutes produced at each plant operated by this company, or by any of its subsidiary or affiliated companies, quantity sold, and gross receipts from sale for past five calendar years and for first six months of 1917. If more than one plant is operated enter data for additional plants on separate sheets and attach.

LOCATION OF PLANT .....

ITEM.	CALENDAR YEAR. 1912.	1913.	1914.	1915.	1916.	Jan. 1 to June 30, 1917.
Lard:			from Dec 20th			
Pounds produced	None	None	20320	326580	1171875	827575
Pounds sold			None	303798	980675	656095
Gross receipts from sale [1]				3341778	15428446	13055682
Oleomargarine:						
Pounds produced						
Pounds sold	None					
Gross receipts from sale [1]						
Butterine:						
Pounds produced						
Pounds sold	None					
Gross receipts from sale [1]						
Lard compounds and lard substitutes:						
Pounds produced						
Pounds sold	None					
Gross receipts from sale [1]						

Card 778

[1] Statement of gross receipts should not include discounts to customers.

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Ex. 97

181

Name of company MOULTRIE PACKING CO.

Address MOULTRIE, GA.

10. Give the total number of pounds of the commodities named in the headings below on hand on the dates indicated. Figures must include stocks of this company and of all subsidiary and affiliated companies.

Date.	Frozen beef.	Smoked hams and bacon.	Dry salt pork.	Pickled pork.	Lard.	Lard compounds and substitutes.	Hides.
1916.							
January 31	None	17630	376000	401045	22787	None	Dried green Daily
February 29	✓	18489	366000	415010	7789	✓	✓
March 31	✓	31724	343300	415295	16722	✓	✓
April 30	✓	28925	385180	410395	8427	✓	✓
May 31	✓	29223	385180	405795	25584	✓	✓
June 30	✓	16767	393175	400895	33350	✓	✓
July 31	✓	13937	370175	310895	43324	✓	✓
August 31	✓	5210	235904	180700	33345	✓	✓
September 30	✓	5210	225994	160690	30220	✓	✓
October 31	✓	5992	191956	124482	15110	✓	✓
November 30	✓	18791	411935	252701	57541	✓	✓
December 31	✓	45795	134391	453089	191200	✓	✓
1917.	✓	✓					
January 31		8113	807344	807812	285080	✓	✓
February 28	✓	11741	801344	799112	281350	✓	✓
March 31	✓	32809	675291	454856	236586	✓	✓
April 30	✓	31702	245763	214766	226696	✓	✓
May 31	✓	21701	443037	227158	210596	✓	✓
June 30	✓	13242	403360	105315	171480	✓	✓
July 31	✓	20566	68870	135360	113855	✓	✓

Ex. 97 181

Name of company MOULTRIE PACKING CO.,

Address MOULTRIE, GA.

19. If this company, or any of its subsidiary or affiliated companies, depends on others for refrigerator cars, state fully how such cars are furnished, by whom and on what terms. If you have any difficulty in securing cars or if, in your judgment, terms and conditions or any practices are unreasonable, state the facts fully. (Use separate sheet of paper and attach.)

20. If you, or any of your subsidiary or affiliated companies, operate private cars but do not operate icing stations, state fully under what conditions and upon what terms icing is done for you and by whom. If in your judgment terms and conditions or any practices are unreasonable, state the facts fully. (Use separate sheet of paper and attach.)

21. If this company, or any of its subsidiary or affiliated companies, sells any of its products through its own branch houses or through subsidiary or affiliated companies or branch houses of the same, attach a list of all such branch houses, giving separately for each the following information: (*a*) Name and location: (*b*) total pounds of fresh meat sold during past fiscal year, also total pounds of (*c*) cured meat, (*d*) poultry, (*e*) butter, (*f*) cheese, and (*g*) total dozens eggs sold during same period at each such branch house. Also attach a list of all other products sold through branch houses.

None

22. If any manufacturing or packing (such as smoking meats, slicing and packing meats, etc.) is done in any of the branch houses listed under Question 21 or in connection with any of them, state the nature and extent of such manufacturing or packing as to each branch house where it is carried on. (Use separate sheet and attach.)

None

23. If this company does not sell its products through branch houses, or sells only in part through branch houses, state fully the method of selling its various products, as through brokers, to wholesalers, etc. (Use separate sheet and attach.)

This report and all attached statements made and signed this 5th day of Feb 1917.

MOULTRIE PACKING CO. By C. H. Wallow
(Name of corporation.) (Name and position of person signing; to be signed in person.)

Sec'y

2345 Moultrie Packing Company
Pork Packers
Moultrie, Georgia

Commission's Exhibits 98 and

October 5, 1917.

Federal Trade Commission,
Washington, D. C.

Referring to Paragraph 23, page 10, we sell the majority of our product through Swift and Company Branch Houses and we also have an outlet through Brokers. These Brokers are paid a commission and sell to the trade, we filling orders and carrying customers on our books.

Yours respectfully,
MOULTRIE PACKING COMPANY.

FAL:BH
Docket No. 453—Ex. 98
Witness: Luchsinger
3-4-21.

2346 Moultrie Packing Company
Pork Packers
Moultrie, Georgia

October 5, 1917.

Federal Trade Commission,
Washington, D. C.

Referring to Paragraph 20, page 10, wish to advise that we are subsidiary to Swift and Company adn all our icing is done either by the railroad companies or other ice houses who do icing. As far as our judging, the terms and conditions are reasonable.

Yours respectfully,
MOULTRIE PACKING COMPANY.

FAL:BH
Docket No. 453—Ex. No. 99
Witness: Luchsinger
3-4-21.

ission's ibits Nos. and 101.

2347

Moultrie Packing Company
Pork Packers
Moultrie, Georgia

October 5, 1917.

Federal Trade Commission,
Washington, D. C.

Referring to Paragraph 19, page 10, wish to advise that in nearly all cases Moultrie Packing Company depend upon the Swift Refrigerating Transportation Company for their SRL cars. These cars are obtained from their Transportation Agents located in the South. We have no regular terms and have no difficulty in securing cars. If occasion should arise that we should be short, we would ask the local Railroad people to obtain other Refrigerator cars.

Yours respectfully,
MOULTRIE PACKING COMPANY.

FAL:BH
Docket No. 453—Ex. 100
Witness: Luchsinger
3-4-21.

2348

Meat Investigation
P. No. Sch. 5 S. No. 05

Docket Division File
F. T. C. v. Swift & Co.
File No. 9—1013-2-3
Federal Trade Commission
Docket No. 453 Exhibit No. 101
Witness Luchsinger
Complainants Date 3-4-21
Defendants

(In right-hand margin) Moultrie Packing Co.

2349

Name of Company Moultrie Packing Co.

Address Moultrie Ga.

7. (a) State total amount of borrowed funds, including advances, as of June 30, 1917. (If a corporation, exclude amount of bonds reported in Question 6 (b) above.) 202,-855.52.

(b) Give following information regarding each obliga-

tion included in the total amount stated in answer to Question 7 (a):

Name of holder.	Address.	Character of obligation.	Amount.	Character of property, if any, pledged as security.
As per attached				
(Written in left-hand margin) Card F F S Ver 10-22-17 R M T				
(Written in right-hand margin) R M T Ver. J H W.				

8. If any outstanding obligations of this company are guaranteed or in any way assumed as to dividend or as to payment of principal or interest, or both, by any other corporation, partnership, or individual, attach a statement giving the following information as to each such obligation:

(a) Kind and amount of such obligation.

(b) Name and address of guarantor or assumer of obligation or indorser thereof.

(c) Extent and conditions of guaranty or of obligation assumed.

(d) Consideration for guaranty or assumption of obligation.

9. If this company is guarantor of, or is otherwise obligated for the payment of the obligations of any other corporation, partnership, or individual, including contingent liability for such obligations by indorsement, attach a statement giving the following information as to each such obligation:

(a) Kind and amount of such obligation.

(b) Name and address of such other corporation, partnership, or individual.

(c) Extent and conditions of guaranty, or of obligation assumed by this company.

(d) Consideration for such guaranty or assumption of obligation.

2350 MOULTRIE PACKING COMPANY
PORK PACKERS
Moultrie, Georgia

Atlanta Nat'l Bank	Atlanta, Ga.	Notes	$75,000.00	None
Moultrie Banking Co.	Moultrie, Ga.	Notes	47,000.00	None
Citizens Bank	Moultrie, Ga.	Notes	18,000.00	None
First Nat'l Bank	Moultrie, Ga.	Notes	12,500.00	None
Swift Refriger Co	Chicago, Ill.	Notes	355.52	None
F. R. Pidcock	Moultrie, Ga.	Notes	5,000.00	None
Mrs. Anna P. Ashburn	Moultrie, Ga.	Notes	2,000.00	None
W. C. Vereen	Moultrie, Ga.	Notes	5,000.00	None
J. N. Pidcock	Moultrie, Ga.	Notes	5,000.00	None
W. C. Vereen	Moultrie, Ga.	Notes	5,000.00	None
W. H. Barber	Moultrie, Ga.	Notes	3,500.00	None
Mrs. Sudie G. Barber	Moultrie, Ga.	Notes	5,000.00	None
Mrs. Iola B. Morrison	Moultrie, Ga.	Notes	5,000.00	None
R. J. Corbett	Moultrie, Ga.	Notes	10,000.00	None
J. R. Hall	Moultrie, Ga.	Notes	1,000.00	None
W. J. Matthews	Moultrie, Ga.	Notes	1,000.00	None
Mrs. J. B. Carlton	Moultrie, Ga.	Notes	2,500.00	None
			$202,855.52	

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2351 16. Date on which this company's fiscal year closes June 30th

17. Attach to this report the following statements, for each year of the company's past five fiscal years:

(a) True balance sheet.

(b) True itemized profit and loss and income statements.

(c) True details of changes in surplus account during each fiscal year.

This report and all attached statements signed this 17th day of September, 1917.

MOULTRIE PACKING CO.
(Name of company.)

By C. H. WALLEW *Secy & Treasr*
(Name and position of person signing; to be signed in person.)

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2352

MOULTRIE PACKING COMPANY

PORK PACKERS

Moultrie, Georgia

Surplus Account June 30, 1917

Credits				
June	30, 1916,	Gain from Operations	$ 68,404.05	
Dec.	30, 1916.	Gain from Operations	11,893.98	
June	30, 1916	Gain from Operations	49,593.62	
July	31, 1916	Gain from Operations	11,445.05	
Aug.	31, 1916	Moultrie Banking Co	304.52	
Nov	1, 1916	Brokers Commissions	28.93	
Nov.	30, 1916	Fourth National Bank	100.00	
Dec.	30, 1916		242.00	
Dec.	30, 1916	Ga. Nor Ry Claim account	1,399.10	
Dec.	30, 1916	Profit and Loss	874.12	
Jany	31, 1917	Check Frank Williams	49.56	
Jany	31, 1917	Telephone Taxes etc	30.59	
Jany	31, 1917	Accounts Payable	287.84	
Feby	28, 1917	Insurance	20.00	
Feby	28, 1917	Brokers Commissions	6.87	
March	31, 1917	Refund Recording Charter	5.75	
March	31, 1917	Brokers Commissions	6.87	
June	30, 1917	Profit and Loss	401.08	$145,093.93
Debits				
June	30, 1915	Loss from operations	$ 19,218.51	
Aug	31, 1916		116.86	
Sep	2, 1916	Reserves	16,000.00	
Sep	2, 1916	Loss from operations	22,459.02	
Sept	2, 1916	Profit and Loss	2,423.24	
Nov	1, 1916	Brokers Commissions	351.59	
Nov	1, 1916	Brokers Commissions	330.13	
Nov	30, 1916	Accounts	27.50	
Nov	30, 1916	Freight	10.00	
Dec	31, 1916	Accounts Payable	46.50	
Dec	31, 1916		117.89	
Dec	31, 1916	C. C. Gewin	204.09	
Mch	31, 1917	Brokers Commissions	6.87	
Mch	31, 1917	Brokers Commission	6.87	
Mch	31, 1917	Accrued Interest	1,922.40	
			$ 63,241.47	
Balance Surplus June 30, 1917			81,852.46	$145,093.93

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2353

MOULTRIE PACKING COMPANY
PORK PACKERS
Moultrie, Georgia

MOULTRIE PACKING COMPANY
MOULTRIE, GA
FINANCIAL STATEMENT AS OF JUNE 30, 1917.

ASSETS		
Cash in Banks	$ 17,706.30	
Accounts Receivable	60,541.48	
Notes Receivable	4,968.25	
Reserve Disputed Amts. Accts Receivable	3,684.43	
Inventory	149,101.27	
Accrued Interest	152.03	
Unexpired Insurance	1,133.36	
Buildings	105,546.38	
Real Estate	1,648.75	
Machinery & Equipment	43,106.00	
Furniture & Fixtures	1,990.95	
Sundry Debits	7,868.73	
Bonds Unsold	100,000.00	$497,447.93
LIABILITIES		
Capital Stock	96,600.00	
Notes Payable	202,855.52	
Accounts Payable	9,806.29	
Brokers Commission Accounts	1,961.90	
Reserve for Interest Notes Payable	2,000.00	
Reserve for Taxes	510.00	
Reserve for Bad Accounts	1,861.76	
Bonds	100,000.00	
Surplus	81,852.46	
	397,447.93	497,447.93
Result year ended June 30, 1915 DEFICIT	$19,218.51	
Result year ended June 30, 1916 Surplus	52,404.05	
Result year ended June 30, 1917 Surplus	48,666.92	
Surplus June 30, 1917	$81,852.46	

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2354

MOULTRIE PACKING COMPANY

MOULTRIE, GA.

STATEMENT OF OPERATIONS JANUARY 1ST TO JUNE 30TH, 1917

PURCHASES—			
Cattle		$ 25206.83	
Hogs		572391.05	
Feed		1919.60	
Goats		83.90	
Meat		14.00	
Sheep		73.80	
Grease		3234.93	
			$602924.11
INVENTORY CLEARING ACCOUNT			99533.19
COST OF PRODUCTS SOLD			702457.30
SALES—			
Beef		$ 22639.62	
Pork		702945.60	
Goats		146.08	
Sheep		64.04	
Hides		5494.03	
Lard		130556.82	
Grease		17864.73	
Tankage		4319.66	
Tallow		206.10	
Hair		1957.05	
Killing Cattle		217.50	
		886411.23	
EXPENSE ON SALES—			
Freight on Meat	$23814.29		
Commissions	17749.80		
Allowances	4387.89	45951.98	
NET VALUE OF SALES			840459.25
Gross Profit			138001.95

159-16

2355

MOULTRIE PACKING COMPANY

MOULTRIE, GA.

OPERATING STATEMENT

PLANT EXPENSE		
Boxes	$6601.40	
Barrels	3737.64	
Fuel	7235.24	
General	1133.09	
Ice & Storage	2569.54	
Lard Pails	1304.52	
Labor	25461.64	
Oil Waste & Packing	563.99	
Paper Cloth & Twine	4025.56	
Refrigeration	393.18	
Repairs	669.22	
Supplies	9089.71	
Drayage	1603.47	
Laundry	52.00	
		$ 64440.20
GENERAL EXPENSE		
Interest	10678.15	
Administrative	97.76	
Insurance	1804.41	
Legal	811.70	
Office	306.64	
Printing and Stationery	552.28	
Postage	708.16	
Salaries	6946.25	
Taxes	811.59	
Traveling	130.63	
Tel & Tel	571.87	
Car Repairs	287.89	
Advertising	200.80	
		$ 23968.13
TOTAL OPERATING EXPENSE		88408.33
GROSS PROFIT		138001.95
OPERATING EXPENSE		88408.33
NET PROFIT CARRIED TO SURPLUS		49593.62

159-17

2356

MOULTRIE PACKING COMPANY

PORK PACKERS

Moultrie, Ga.

STATEMENT OF CONDITION YEAR ENDED JUNE 30, 1916.

ASSETS—		
Cash in Bank	$ 3,439.10	
Accounts Receivable	35,109.94	
Notes Receivable	6,425.97	
Inventory	116,838.63	
Unexpired Insurance	1,280.14	
Unpaid Stock	3,130.00	
New Building	48,885.48	
Land	1,648.75	
Building	54,556.29	
Machinery	37,513.93	
Well	2,285.40	
Car Equipment	2,424.40	
Office Fixtures	1,419.18	
Accrued Interest	1,922.40	
Personal Accounts	67.12	
Bonds Unsold	100,000.00	$417,946.73
LIABILITIES		
Capital Stock	99,600.00	
Bonds	100,000.00	
Notes Payable	167,060.01	
Accounts Payable	14,058.03	
Bonds Interest	2,514.97	
Unpaid Taxes	690.00	
Unpaid Labor	381.90	
Brokers Accounts	456.28	
	$384,761.19	
Surplus	33,185.54	$417,946.73
Loss to June 30, 1915	19,218.51	
Gain for year ended June 30, 1916	52,404.05	
Surplus June 30, 1916	33,185.54	

159-18

2357

MOULTRIE PACKING COMPANY

PORK PACKERS

Moultrie, Georgia

OPERATING STATEMENT FOR YEAR ENDED JUNE 30TH, 1916

Refrigerator Expense	$ 1,320.00	
Empty Boxes	9,022.24	
Fuel	6,683.15	
Empty Barrels	4,988.79	
Drayage	1,762.68	
Expense	848.46	
Ice & Storage	2,290.30	
Lard Packages	6,757.46	
Labor	28,186.94	
Oil and Waste	919.12	
Paper Cloth and Twine	5,187.42	
Repairs	1,944.83	
Supplies	5,241.77	
Traveling Expense	157.51	
	75,310.67	
Less Inventory June 30, 1916	7,448.48	
Total House Expense		$67,862.19
Advertising	123.50	
Insurance	1,007.30	
Printing & Stationery	991.07	
Office Expense	426.28	
Legal "	106.70	
Interest	14,618.25	
Postage	1,300.38	
Taxes	1,218.00	
Salaries	7,320.99	
Telegraph & Telephone	734.72	
Total General Expense		27,847.19
Total Expenses		95,709.38
Gross Profit	148,113.43	
Total Expenses	95,709.38	
Net Profit	$ 52,404.05	

159-19

2358

MOULTRIE PACKING COMPANY

PORK PACKERS

Moultrie, Georgia

OPERATING STATEMENT FOR YEAR ENDED JUNE 30TH, 1916.

Beef Inventory June 30, 1915		$ 2,260.31	
Cattle Purchased " " 1916		16,424.85	
Pork Inventory " " 1915		47,211.36	
Hogs Purchased " " 1916		519,026.84	
Feed " " " 1916		2,847.56	
Meat " " " 1916		34,124.40	
Stearine " " " 1916		565.17	
Total cost of products			$622,460.49
Deduct Inventory:			
Beef		1,076.00	
Pork		107,823.33	
Lard		490.82	
		109,390.15	
Cost of Products Sold			513,070.34
Beef Sales		17,486.52	
Pork "		572,970.98	
Grease "		15,403.10	
Hide "		4,122.87	
Lard "		107,861.19	
Tankage "		2,977.62	
Tallow "		29.83	
Hair "		1,620.64	
Cash "		5,414.98	
Killing Cattle		310.93	
Total Value of Sales		728,198.66	
Deduct:			
Commissions	$19,727.19		
Freight Meat	35,659.57		
Allowances etc	11,628.13	67,014.89	
Net Value of Sales			661,183.77
Gross Profit			$148,113.43

159-20

2359

MOULTRIE PACKING COMPANY
PORK PACKERS
Moultrie, Georgia

STATEMENT OF CONDITION, JUNE 30TH, 1915

ASSETS:			
Citizens Bank		$ 329.04	
First National Bank		63.34	
Accounts Receivable		10,869.47	
Notes Receivable		6,331.29	
Insurance		460.30	
Unpaid Stock		3,130.00	
Ga. Northern Ry. Co.		617.27	
A B & A Ry. Co.		65.44	
Southern Express Co		36.44	
Land		1,648.75	
Buildings		54,556.29	
Machinery		36,772.79	
Well		2,285.40	
Car Equipment		2,424.40	
Office Furniture		699.28	
Accrued Interest		1,029.94	
Personal Accounts		90.74	
Inventory		56,706.14	
Loss		19,218.51	197,334.83
LIABILITIES:			
Capital Stock		97,100.00	
Moultrie Banking Company		418.55	
Accounts Payable		5,634.79	
Notes Payable		91,022.64	
Personal Accounts		1,974.87	
Reserve for Taxes		480.00	
Unpaid Salaries		703.98	197,334.83

159-21

2360

MOULTRIE PACKING COMPANY
PORK PACKERS
Moultrie, Georgia

OPERATING STATEMENT FOR YEAR ENDING JUNE 30TH, 1915.

PURCHASES:			
Cattle		$ 35,775.14	
Hogs		169,127.79	
Meat		16,204.98	
Stearine		1,007.51	
Feed		1,828.63	
		223,944.05	
Inventory		52,192.04	
Cost			171,752.01
SALES			
Beef		28,769.27	
Pork		168,519.89	
Hides		4,765.17	
Tankage		2,972.69	
		205,027.02	
COMMISSIONS			
Freight	$4,608.08		
Allowances	9,159.86		
Net Sales	875.45	14,643.39	190,383.63
Gross Profit			18,631.62

159-22

2361 MOULTRIE PACKING COMPANY
PORK PACKERS
Moultrie, Georgia
JUNE 30TH, 1915.

Expenses	$ 773.83
Drayage	3,247.28
Fuel	920.07
Expense	1,037.59
Ice & Storage	13,630.38
Labor	28.46
Repairs	7,422.61
Supplies	789.04
Traveling Expense	134.93
Advertising	3,068.85
Interest	302.75
Insurance	460.21
Office Expense	316.64
Postage	505.00
Telephone & Telegraph	422.15
Salaries	4,790.34
Total	37,850.13
Less Gross Profit	18,631.62
Loss for Period	19,218.51

159-23

2362 Moultrie Packing Company
Pork Packers
Moultrie, Georgia, Sept. 17th, 1917.

Federal Trade Commission
Washington, D. C.

Dear Sirs:—

We are mailing you form 181 and we wish to advise that the original of these forms has been misplaced and we could not locate in time to ask you to send us another report.

Will you please send us a set of reports returning the attached and we will return promptly after you have used these for your purpose.

Yours respectfully,
MOULTRIE PACKING COMPANY.
(Signed) C. H. WALLOW.

CHW:BH

159—24

2363 ECM

February 11, 1918.

Moultrie Packing Co.,
Moultrie, Ga.

Gentlemen:

Referring to your Schedule "A," Slaughtering and Meat Packing:

Your statements of operations for the periods ended June 30, 1915, 1916, and 1917 show the inventories at the end of these periods as follows: $52,192.04, 109,390.15, and blank: whereas the inventories at the beginning of these periods are shown as blank, $49,471.67 and $99,533.19 respectively.

Inasmuch as the inventory at the end of the prior period should be identical with the inventory at the beginning of the current period you are requested to revise the above statements at the earliest possible date.

Very truly yours,

FEDERAL TRADE COMMISSION

By

EBC:EF *Secretary.*

159—25

2364 Swift & Company
Moultrie, Ga.

February 20, 1918.

A 84872

Federal Trade Commission,
Washington, D. C.

—Attention L. L. Bracken, Referring to Yours of the 11th., Inst., Schedule "A" Slaughtering and Meat Packing:

Operations for the period ending June 30th, 1915, 1916, 1917, seem to be confusing to you. The correct figures as shown by the statement of Assets and Liabilities attached to the schedule sent you, are as follows:

Inventory June 30th., 1915..... 56,813.74.
Inventory June 30th., 1916.....116,838.63.
Inventory June 30th., 1917.....149,101.27.

The closing inventories of June 30th., 1915 is the opening inventory 1916. The supply inventories were handled in the expenses viz: Opening inventorw plus purchase less closing inventory, net expense for supplies.

Trust this information will be satisfactory, if not, advise any further data needed.

Yours respectfully,

SWIFT & COMPANY
Per CHW

CEH/WDR

159—26

2365 Oct. 25th, 1917. Commission Exhibit 102.

Mr. F. A. Luchsinger,
Moultrie Packing Co.
Moultrie, Ga.

Dear Sir:

I am in receipt of your letter of the 22nd, advising me of your decision to discontinue your account in Atlanta on a brokerage basis on Oct. 29th, which does not come as a surprise to me as knew that this would take place sooner or later. The only thing that has surprised me was that it didn't come sooner.

I will take pleasure in taking care of all collections for you and disposing of the stock on hand to best advantage, thus closing our relations as early as practicable.

I appreciate your kind expressions as to the agreeableness of our business relations, and while I have not had the pleasure of meeting you personally, I would be glad to do so at any time you come to Atlanta.

When you get too much of the "Soft" Moultrie Lard on hand and cannot sell it to advantage, touch the wires and I will buy a car or two from you if the price is right. I will still be in the game. Don't suppose you care who you sell it to, do you? Just so you get your money?

Yours very truly,

(In ink) Identification
"I"—Wit.—
Stanaland
3/2/21 L. C. Algee

Stamped:
Interstate Commerce Commission
Docket No. 453
Exhibit No. 102
Witness: Luchsinger
Date 2-4-21

2366 Comm. Ex. 103 omitted by stipulation.

2367

COMM. EX 104

MOULTRIE PACKING CO.

Terms
Rating
Reference
Credit Limit
1916

Sheet No.
Name Stanaland M. M.
Address Atlanta Ga.
Broker

Date 1915	Items	Folio √	Debits	Balance	Credits √	Folio	Items	Date 1916
Sept 3		JE 1 √	818 33		46 √	J 318		Apl 28
7		" 2 √	399 28		30 √	365		May 23
11		" 3 √	1081 22		1 60 √	377		27
12		" 4 √	789 78		818 33 √	M		Sept 3
16		" 5 √	496 01		399 28 √	"		" 7
20		" 7 √	1019 83		1081 22 √	"		" 11
30		" 10 √	2 36		789 78 √	F		" 12
25		" 8 √	904 18		496 01 √	M		" 16
27		" 9 √	576 84		1019 82 √	F		" 20
30		" 10 √	2/c		904 18 √	M		" 25
					576 84 √	M		" 27
Oct 3		JE 11 √	326 00		326 00 √	M		Oct 3
" 5		JE 12 √	547 23		547 23 √	"		" 5
" 9		JE 13 √	195 14		195 14 √	"		" 9
" 12		JE 14 √	697 78		697 78 √	"		" 12
" 14		JE 16 √	506 21		506 21 √	"		" 14
" 18		JE 17 √	668 34		668 34 √	M		Oct 18
" 20		JE 18 √	484 01		484 01 √	C		" 20
" 23		JE 19 √	779 38		779 38 √	M		" 23
" 26		JE 20 √	602 58		602 58 √	F		" 25
" 26		JE 22 √	655 22		655 22 √	M		" 27
" 28		JE 23 √	474 96		474 96 √	"		" 28
" 31		JE 26 √	629 00		1184 47 √	"		" 30
" 30		JE 25 √	1184 47		629 00 √	"		" 31
Nov 4		JE 27 √	909 45		909 45 √	"		Nov 3
" 6		JE 28 √	1648 66		1648 66 √	"	√	" 6
" 9		JE 29 √	1231 63		1231 63 √	"	√	" 8
" 9		JE " √	1319 76		1319 76 √	"	√	" 9
" 14		JE 30 √	2549 07		2549 07 √	"	√	" 13
" 15		JE 31 √	1010 19		1010 19 √	"	√	" 15
" 16		JE 23 √	1145 01		1145 01 √	"	√	" 16
" 18		JE 23 √	478 65		478 65 √	"	√	" 17
" 20		JE 34 √	2849 57		2849 57 √	"	√	" 20
" 27		JE 36 √	793 89		2295 78 √	"	√	" 23
" 23		JE 35 √	2295 78		793 89 √	"	√	" 25
" 27		" 37 √	551 87		551 87 √	"	√	" 27

FEDERAL TRADE COMMISSION
Docket No. 453 Exhibit No. 104
Witness Smith
{Complainants Date 3-1-21
{Defendants Steno Alger

2367

COMM. EX 104

MOULTRIE PACKING CO.

Sheet No.
Name Stanaland M. M
Address Atlanta Ga
Broker

Terms
Rating
Reference
Credit Limit

Date 1916	Items	Folio	√	Debits	Balance	Credits	√	Folio	Items	Date 1916
Nov 30		JE	39	2439 45		2439 45	√	M		Nov 30
Dec 2		JE	40	1118 55		1118 55	√	"		Dec 2
" 4		"	41	2717 05		2717 05	√	"		" 4
" 5		JE	42	828 20		828 20	√	"		" 5
" 7		JE	43	1351 27		1351 27	√	"		" 7
" 11		JE	44	1077 99		1077 99	√	"		" 11
" 12		JE	45	1173 33		1173 33	√	"		" 12
" 14		JE	48	1986 08		1986 08	√	"		" 14
" 18		JE	49	1768 63		1768 63	√	"		" 18
" 21		JE	50	1872 76		546 21	√	"		" 22
" 21		JE	51	546 21		1222 84	√	"		" 26
" 26		JE	52	1222 84		1872 76	√	"		" 21
" 28			53	2482 88		2482 88	√	"		" 28
" 29			54	2971 69		2971 69	√			
					√	768 87	√	M		Jan 4
Jan 2		JE	1	1218 22	√	1218 22	√	"		" 2
" 4		JE	2	768 87	√	2690 69	√	M		Jan 5
"			3	2690 69	√	1615 38	√	"		" 9
" 9		JE	4	1615 38	√	1166 11		"		" 11
"		"	5	1166 11	√	1778 07	√	F		" 15
" 15		"	6	1778 07	√	1036 58	√	M		" 18
" 18		"	7	1036 58	√	1338 48		"		" 18
" 18		"	8	1338 48						
" 22		"	9	1055 69	√	1055 69	√	M		Jan 22
" 23		"	10	2443 13	√	2443 13	√	"		" 23
" 25		"	11	1392 84	√	1392 84	√	"		" 25
" 29		"	12	4307 25	√	4307 25	√	"		" 29
" 30		"	13	464 66	√	464 66	√	"		" 30
" 31		"	14	1675 43	1675 43	2347 93	√	F		Feb 5
Feb 2			√	2347 93		1675 43	√	M		" 2
Feb 8		JE	2	1457 99		1457 99	√	M		" 7
" 10		JE	4	1931 30		1931 30	√	"		" 10
" 14		JE	5	2985 11		2985 11	√	"		" 14
" 16		JE	6	1018 15		1018 15	√	"		" 16
" 19		JE	7	1122 89		1122 89	√	C		" 19
" 19		JE	8	1240 73		1240 73	√	F		" 19

2368

COMM. EX 104a

MOULTRIE PACKING CO.

Terms
Rating
Reference
Credit Limit

Sheet No.
Name Stanaland M. M.
Address Atlanta Ga
Broker

Date 1917	Items	Folio	√	Debits	Balance	Credits	√	Folio	Items	Date 1917
Feb 20		JE	1	1080 01		1080 11	√	M		Feb 20
" 22		JE	10	1337 38		1719 77	√	"		" 24
" 26		JE	12	779 97		779 97	√	F		" 26
" 24		JE	11	1719 77		1337 38	√	F		" 22
" 27		JE	14	1396 90		1396 90	√	F		" 27
" 28		JE	15	1366 07		1366 07	√	M		" 28
Mch 2		JE	16	1192 69		1192 69	√	"		Mch 3
" 5		JE	17	2053 96		2053 96	√	"		" 5
" 7		JE	18	6882 78		6882 78	√	"		" 7
" 9		JE	19	2057 08		2057 08	√	F		" 9
" 13		JE	21	1157 61		1157 61	√	M		" 13
" 12		JE	20	2463 31		2463 31	√	F		" 12
" 15		JE	23	2171 08		2171 08	√	F		" 15
" 19		JE	25	3146 48		3146 48	√			" 19
" 20		JE	26	1529 09		1529 09	√	M		" 20
" 21		JE	27	1895 71		1895 71	√	M		" 22
" 23		"	28	1366 07		1366 07	√	"		" 23
" 26		JE	29	1808 31		1808 31	√	"		" 26
" 28		"	30	752 41		752 41	√	"		" 27
" 28		"	31	1013 72		1013 72	√	"		" 28
Apr 2		JE	1	2443 98		2443 98	√	"		Apr 2
" 3		JE	2	2024 83		2024 83	√	"		" 3
" 5		JE	4	692 14		692 14	√	"		" 5
Apr 5		JE	3	1823 69		1823 69	√	"		" 5
" 5		JE	5	1584 88		1584 88	√	"		" 5
" 9		JE	6	2458 68		2458 68	√	"		" 9
" 10		"	7	1664 30		1664 30	√	"		" 10
" 11		"	8	1415 13		1415 13	√	F		" 11
" 13		"	9	3567 80		1335 13	√	M		" 13
" 14		"	10	1335 13		3567 80	√	"		" 14
" 16		"	11	1957 06		1911 49	√	"		" 19
" 19		"	13	1911 49		1957 06	√	"		" 16
" 18			12	1998 71		1998 71	√	"		" 18
" 21		JE	14	3060 83		3060 83	√	"		" 21
" 23		JE	15	1979 22		1979 22	√	"		" 23
" 23		JE	16	2394 52		2394 52	√	"		" 24

FEDERAL TRADE COMMISSION
Docket No. 453 Exhibit No. 104a
Witness Smith
{Complainants Date 3-5-21
{Defendants Steno. Algee

2368

COMM. EX 104a

MOULTRIE PACKING CO.

Sheet No.
Name Stanaland M. M.
Address
Broker

Terms
Rating
Reference
Credit Limit

Date 1917	Items	Folio	√	√ Debits	Balance	Credits	√	Folio	Items	Date 1917
Apr 27		JE	17 √	2011 64		2011 64	√	M		Apr 27
" 28		JE	18 √	23 90		23 90	√	"		" 28
" 28		JE	19 √	2680 51		2680 51	√	"		" "
" 30		JE	21 √	1268 64		1268 64	√	"		" 30
May 2		JE	1 √	1557 37		1557 37	√	"		May 1
" 4		JE	2 √	1725 46		1725 46	√	"		" 4
" 5		"	3 √	1715 46		1715 46	√	A		" 5
" 7		"	4 √	1733 62		1733 62	√	A		" 7
" 8		"	5 √	1337 71		1337 71	√	A		" 8
" 9		"	6 √	2278 61		2278 61	√	A		" 9
" 11		"	7 √	1426 01		1426 01	√	A		" 11
" 12		"	8 √	1987 73		1987 73	√	A		" 12
" 14		"	9 √	1555 90		1555 90	√	A		" 14
" 15		"	10 √	1982 04		1982 04	√	A		" 15
" 18		"	11 √	4031 49		4031 49	√	A		" 18
" 21		"	12 √	3430 70		3430 70	√	A		" 21
" 24		"	13 √	4442 49		4442 49	√	A		" 24
" 25		"	14 √	1660 14		1660 14	√	A		" 25
" 28		"	15 √	1665 22		1665 22	√	A		" 28
" 30		"	16 √	2742 49		2742 49	√	A		" 30
June 1		JE	1 √	2381 37		2381 37	√	A		June 1
" 5		"	2 √	1947 30		1947 30	√	"		" 5
" 6		"	3 √	2422 52		2422 52	√	"		" 6
" 9		JE	4 √	945 70		945 70	√	"		" 9
" 9		"	4 √	1000 54		1000 54	√	"		" 9
" 14		JE	5 √	1713 21		1713 21	√	"		" 14
" 16		"	6 √	1403 40		1403 40	√	"		" 16
" 19			7	2642 77		2642 77		No Yellow Deposit Slip		
" 21			8 √	1321 81		1321 81	√	A		June 21
July 2		JE	1 √	1043 73		1043 73	√	M		Jul 3
5		"	2 √	1127 14		1127 14	√	"		6
7		"	3 √	873 78		873 78	√	"		9
9		"	4 √	974 25		974 25	√	"		11
11		"	5 √	461 16		461 16	√	"		12
13		"	5 √	982 39		982 39	√	"		14
14		"	6 √	614 97		614 97	√	"		16

2369 COMM. EX. 104 and 104a.

*	2,717.05 √	779.97 √	2,680.51 √
818.33 √	828.20 √	1,719.77 √	1,268.64 √
399.28 √	1,351.27 √	1,396.90 √	1,557.37 √
1,081.22 √	1,077.99 √	1,366.07 √	1,725.46 √
789.78 √	1,173.33 √	1,192.69 √	1,715.46 √
496.01 √	1,986.08 √	2,053.96 √	1,733.62 √
1,019.83 √	1,768.63 √	6,882.78 √	1,337.71 √
2.36 √	1,872.76 √	2,057.08 √	2,278.61 √
904.18 √	546.21 √	1,157.61 √	1,426.01 √
576.84 √	1,228.84 √	2,463.31 √	1,987.73 √
326.00 √	2,482.88 √	2,171.08 √	1,555.90 √
547.23 √	2,971.69 √	3,146.48 √	1,982.04 √
195.14 √	1,218.22 √	1,529.09 √	4,031.49 √
697.78 √	768.87 √	1,895.71 √	3,430.70 √
506.21 √	2,690.67	1,366.07 √	4,442.49 √
668.34 √	2 √	1,808.31 √	1,660.14 √
484.01 √	1,615.38 √	752.41 √	1,665.22 √
779.38 √	1,166.11 √	1,013.72 √	2,742.49 √
602.58 √	1,778.07 √	2,443.98 √	2,381.37 √
655.22 √	1,036.58 √	2,084.83 √	1,947.30 √
474.96 √	1,338.48 √	692.14 √	2,422.52 √
629.00 √	1,055.69 √	1,823.69 √	945.70 √
1,184.47 √	2,443.13 √	1,584.88 √	1,000.54 √
909.45 √	1,398.84 √	2,458.68 √	1,713.21 √
1,648.66 √	4,307.25 √	1,664.30 √	1,403.40 √
1,231.63 √	464.66 √	1,415.13 √	2,642.77 √
1,319.76 √	1,675.43 √	3,667.80 √	1,321.81 √
2,549.07 √	2,347.93 √	1,335.13 √	1,043.73 √
1,010.19 √	1,457.99 √	1,957.06 √	1,127.14 √
1,145.01 √	1,931.30 √	1,911.49 √	873.78 √
478.65 √	2,985.11 √	1,998.71 √	974.25 √
2,849.57 √	1,018.15 √	3,060.83 √	461.16 √
793.89 √	1,122.89 √	1,979.22 √	982.39 √
2,295.78 √	1,240.73 √	2,394.52 √	614.97 √
551.87 √	1,080.11 √	2,011.64 √	
2,439.45 √	1,337.38 √	23.90 √	221,830.17*
1,118.55 √			

2370

Sheet No..... Account No.....

Terms
Rating
Credit Limit

Name Swift & Co.
Address Atlanta, Ga.

Herald Publishing Co., Albany, Ga.

L31021	Date 1917	Items	Folio	√	Debits	Date 1917	Items	Folio	√	Credits
	Sept 27		4258		331 30	√				
	" 27		4259		1737 64	√				
	" 28		4348		19 55	√ Sept 24		J.E. 20	√	2088 49
				√		Oct 10		C 8	√	4568 12
	Oct 1		4481	√	310 58	√ " 17		C 14	√	① 19 55
	" 1		4482	√	621 25	√ " 17		C 14	√	3422 80
	" 1		4483	√	1567 35	√ " 24	2388–1	C 19	√	4885 73
	" 8		4939	√	805 00	√				
	" 8		4940	√	2625 80					
	" 9		4998	√	①19 55					
	" 10		5048	√	2718 47	√				
	" 15		5349	√	24 06	√				
	" 15		5350	√	2143 20	√				
	" 17		5462	√	2154 06					
	" 17		5463	√	18 24					
	" 17		5464	√	49 96					
	" 17		5465	√	54 61					
	" 17		5466	√	65 00					
	" 17		5467	√	58 81					
	" 18		5505	√	53 19					
	" "		6	√	53 38					
	" 27		6064	√	2037 56					
	" 27		6065	√	1069 05					
	" 29		6098	√	69 48					
	Nov 1		6318	√	1787 20					
	" 1	7398–1	6319	√	48 06	Nov 3		JE 23	√	5457 66

FEDERAL TRADE COMMISSION
Docket No. 453 Exhibit No. 105
Witness Smith
{Complainants √ Date 3-5-21
{Defendants Steno. Algee

ion's
its Nos.
nd 107.

2371 Cross Code

Main 4764
Phones) Atlanta 104

Repreesnting
Moultrie Packing Co.
Moultrie, Ga.
Fresh Meats
Hams, Bacon, Lard and
Sausage

Referenes:
Atlanta National Bank
Atlanta, Ga.
Moultrie Banking Co.
Moultrie, Ga.

M. M. Stanaland
Merchandise Broker
P. O. Box 466
55 W. Wall Street

Atlanta, Ga.
Oct. 6th, 1917.

Moultrie Packing Co.
Moultrie, Ga.

Gentlemen:

I some instances this week, I had to meet Western xxx prices especially on pork shoulders and trimmings.

In most instances I can get equal to Western prices, but I am not able to get more.

Yours very truly,

Docket No. 453
Exhibit No. 106
Witness: Stanaland
Date: 3/2/21

164

2372

Oct. 13th, 1917.

Moultrie Packing Co.
Moultrie, Ga.

Gentlemen:

I was unable to get list prices on all pork cuts this week, for the reason that Branch of Swift & Co. was selling Moultrie pork cuts for less. I started off with prices of 26½ shoulders 28 on hams and 31 on loins and sold some at these prices. In fact sold practically all loins at 31 cents, but several of my customers kicked on these prices stating that Swift & Co. were selling at 26—27 and 30 cents, so I investigated the matter and found this to be true, consequently had to drop my prices in order to meet this competition.

I can get as much as any one for the same products on this market, but am unable to overcome a handicap like this.

Yours very truly,

Docket No. 453
Exhibit No. 107
Witness: Stanaland
Date: 3/1/21

165

2373 Oct. 20th, 1917. Commissi Exhibit 108.

Moultrie Packing Co.
Moultrie, Ga.

Gentlemen:

I am sending you in today an order for car to be shipped next week, in which is included some fresh meats, and beg to say that if you are short on fresh meats, it will be all right to leave them x off my order and ship the cured stuff and lard.

My reason for saying this is that I am constantly coming in conflict with your other agency on prices here on the same commodity with varying prices which demoralizes my fresh meat trade, so rather than have this, I would prefer devoting my time to lard and cured meats on which there is a set price and if I do not sell one day, I can wait till the next and it does not spoil.

Don't mis-understand me in this. I will sell fresh meats for you if you wish, doing my very best to maintain prices and make money for you, but I can concentrate my efforts on other things from which I can get a greater volume and not be constantly worried about a few hundred pounds of fresh meats spoiling on me before I can yet your prices for it. Then too, you doubtless have all the output you need through other places.

Kindly let me have an expression from you regarding this and advise me by wire when and what will be shipped.

Yours very truly,

Docket No. 453
Exhibit No. 108
Witness: Stanaland
Date: 3-1-21

166

2374 COMMISSION'S EX. 109.

Cross Code

Main 4764
Phones) Atlanta 104

Representing
Moultrie Packing Co.
Moultrie, Ga.
Fresh Meats
Hams, Bacon, Lard and
Sausage

References
Atlanta National Bank
Atlanta, Ga.
Moultrie Banking Co.
Moultrie, Ga.

M. M. Stanaland
Merchandise Broker
P. O. Box 466
55 W. Wall Street

Atlanta, Ga.
Jan. 20th, 1917.

Mr. W. C. Vereen, President,
Moultrie Packing Co.
Moultrie, Ga.

Dear Sir:

You are still out of line on your prices on case goods, consequently I am unable to make any sales on 5c and 10c without meeting prices of the other packers. Now I want you to understand in the beginning that I am not after a cheaper price than they have, but I do want a price equal to theirs, as I am not salesman enough to overcome a handicap of this kind with a commodity that has only been on the market a short time against old advertised brands that have been on the market for years.

To illustrate what I mean: Swift & Co. have been selling their "Silver Leaf" brand here this week at $9.90 in 5s and 10s, and quite a number of my customers told me that they would take your lard at the same price, but that they were in business for pecuniary gain and could not get any more for our lard than they could this, consequently they bought the other. Now I cut the price in some instances where the quantities were sufficient to justify it, but I didn't feel like cutting the price on case goods from 10/30 to $9.90 without your consent.

You will recall that I went over the matter of putting your cases of 5s and 10s at the same price as 60s, and you promised to investigate the cost and let me know the result, but suppose you were so busy on your return that you overlooked it.

As stated to you at the time, I believe that it would be much better for you in every way to put your case lard on on the market in preference to the tub lard.

I have just figured a case each of 5s and 10s to see just how much less lard is in them that a sixty pound tub of lard, with the following result: The net weight of a number of 10 is 8# & 10 ozs. Total weight for case net 51# 12 oz. leaving you a gain of 8# and 4 oz. or 8¼# at .16½ cents equal to $1.36, which you have to pay for your buckets and case, while in your 60 lb. tubs you get nothing to pay for the container. The no. 5s figured the same way, will give you 10½# at 16½ cents equal to $1.73 to pay for pails and case. Of course, I don't know how much your pails cost, but should not think it would be but little more than this. However, I don't want you to think that I am trying to run that end down there, but I want you to help me to help us both to build a business for the future.

In other words, I want to put your products on the market in such a way that the public will make the merchant handle it by demanding your products, whether he wants to do so or not.

Now I do not know what the prices will be on lard next week, but I have been to high this week. Awaiting your response, I am

Yours very truly,

2375 COMMISSION'S EXHIBIT 110.

Bank book,
Birmingham Trust & Savings Co. in account with Andalusia Packing Co.
Physical Exhibit.

2376 Docket No. 453
Exhibit No. 111
Witness: Henderson
Date: March 11, 1921

Andalusia, Alabama. 6-8-17

For and in consideration of the sum of one dollar ($1.00) in hand paid to A. C. Darling and T. E. Henderson the receipt of which is hereby acknowledged, the said A. C. Darling and T. E. Henderson does hereby give to H. C. Carr, for Swift & Company an option until June 27th, 1917, on their shares of stock in the Andalusia Packing Company, of Andalusia, Alabama, the said A. C. Darling owning one hundred forty-four (144) shares and T. E. Henderson owning one hundred thirty (130) shares respectively of said stock at and for the sum of seventy five dollars ($75.00) per share, the par value of said shares being $50.00 each.

It is understood and agreed also, that in the event the said H. C. Carr, for Swift & Company sees fit to avail themselves of the purchase of the above described stock at the price named, that the said A. C. Darling and T. E. Henderson agree and bind themselves to use their best efforts and influence toward buying all the remaining shares of stock in the said Andalusia Packing Company at and for the sum of ($75.00) seventy five dollars per share, but in the event that the said Darling and Henderson are unable to purchase the remaining shares of the said corporation this option shall not be binding upon the said Darling and Henderson for the delivery of their own shares.

A. C. DARLING
T. E. HENDERSON

2377

ANDALUSIA PACKING CO.
OPERATING STATEMENT FOR PERIOD ENDING MAY 1st, 1917

No.....

Specially Designed by J. H. McGinty & Co.
Certified Public Accountants, Atlanta

Assets and Liabilities

Account	Detail	Total
Assets:		
First National Bank	39975 42	
Bank of Andalusia	1814 35	
Other Banks	2240 33	
Cash Fund	9 00	44039 10
Accounts Rec. No. 1	61892 77	
2		
Atlanta	13456 92	
Birmingham	15499 47	
Notes Receivable	900 00	
Inventory	261079 09	352828 25
Plant and Equipment	142983 20	
Car Equipment		
Office Fixtures	1314 93	
Unexpired Insurance	955 70	
Accrued Interest	3501 86	
Personal Accounts	687 09	149942 78
Total Assets		**546310 13**
Liabilities:		
Capital Stock	133692 00	
Accounts Payable	42349 07	
Notes Payable	305160 00	
Unpaid Taxes		
Unpaid Interest	2384 74	
Unpaid Other Items		
Surplus	78 12	
		483663 93
Total Liabilities		
Excess Assets Liabilities		**62646 20**

Purchases and Sales

Account	No.	Weight	Detail	Total	Aver. Price
Purchases:					
Pork Inventory Last Period			47452 85		
Hogs			689919 97		
Meats					
Supplies			6326 16		
Feed			5138 94		
Stearine			3211 08		
Total Cost Hog Products				752049 00	
Less Inventory Live Hogs and Supplies				3996 20	
Cost of Hog Products				748052 80	
Sales:					
Fresh Pork			162318 59		
Shipper Pigs			89572 75		
D. S. Meat			199407 48		
Smo. Meat			21871 05		
Hams			27007 39		
Lard			115573 29		
Sausage			11707 45		
Pig Feet			871 85		
Grease			34468 61		
Tankage			4510 90		
Hair			1376 44		
Total Value Sales				668685 80	
Add Inventory Products				245636 94	
Value of Production				914322 74	
Less—Allowances			3072 51		
Commissions			13905 86		
Freight			23245 31	40224 18	
Net Val. Production				874098 56	
Gross Profit				126045 76	
Beef:					
Beef Inv. Last Period					
Cattle Purchased			33160 54		
Total Cost				33160 54	
Less Inv. Live Cattle				1547 29	
Cost of Beef Prod.				31613 25	
Sales:					
Beef		27939 88			
Hides		6008 28			
Beef Inventory		1706 56			
Total Val. Beef Prod.			35654 72		
Gross Profit			4041 47		
Total Gross Profit			130087 83		

Expenses

Account	Ledger	Inventory	Net Amount	Per Cent Sales
House Exp.:				
Drayage	329 62	85 78	213 94	
Expenses	1068 40	215 93	852 47	
Empty Boxes	4364 38	692 83	3671 55	
Empty Barrels	3921 82	859 30	3062 52	
Fuel	8909 38	1830 10	7079 23	
Ice and Storage				
Lard Packages	6993 02	1981 26	011 76	
Labor	18309 97		18309 97	
Oil Waste and Pck.	838 33	307 06	531 27	
Paper, Cloth and Twine	4744 31	1368 25	3376 06	
Pig Feet Packages	524 50	361 50	163 00	
Repairs	1454 08	250 09	1203 99	
Refrigeration Exp.	1308 68	240 00	1068 68	
Condemned Hogs	1511 83		1511 33	
Total	54278 27	8192 10	46086 17	
General Exp.:				
Inspection Fees	17 60			
Interest	12053 37			
Insurance	1772 43			
Selling Exp.	1489 63			
Office Exp.	5312 93			
Postage	251 45			
Printing and Staty.	1263 91			
Guards	95 00			
Taxes	843 70			
Tel. and Tel.	687 66		23427 68	
Unearned Interest & Insurance			2072 82	
Total General			21354 86	
Total House			46086 17	
Total Expenses			67441 03	
Gross Profit			130087 23	
Net Profit			62646 80	

Federal Trade Commission
vs
Swift & Co.
Docket No. 453 Exhibit No. 112
March 11, 1921
Com. Witness Reporter
Henderson MacRae

2378

Chicago, Illinois,
July 11, 1917

Commission Exhibit 113.

Mr. T. E. Henderson,
First National Bank of Andalusia,
Andalusia, Alabama.

Dear Sir:

Our Mr. G. D. Rogers expects to be in Andalusia Monday, July 16, to familiarize himself with the business of the Andalusia Packing Company, preparing himself to assume charge as manager at the proper time.

We would appreciate having you make Mr. Rogers acquainted with the people at the plant and with your other friends and business associates with whom he will naturally come in contact in the handling of the business and naturally he will be glad to have your advice on a great many matters for some time to come.

As a matter of policy, think it is desirable that there should be just as little change as possible in the method of handling the business as we prefer to let things run along on about the same lines as you have been handling, permitting our people to become fully acquainted with the situation and conditions.

Yours truly,
(Signed) H. C. Carr

Docket No. 453
Exhibit No. 113
March 11, 1921
Witness: Henderson

Comm. Ex. 114.

ANDALUSIA PACKING COMPANY

UNDER GOVERNMENT INSPECTION

ANDALUSIA, ALABAMA 7/21/17

№ 12416

SOLD TO SWIFT & CO.,

PENSACOLA, FLA.

SHIPPED TO

BROKER DIRECT

ORDER RECEIVED 7/20

DATE SHIPPED 7/21

VIA FRT.

CAR

ALL BILLS DUE AND PAYABLE AT OUR OFFICE ON OR BEFORE MONDAY FOLLOWING DATE OF SALE

YOUR ORDER NO.	ORDER NO. 10872 B/L NO. 6809	SHIPPED PIECES	SHIPPED POUNDS	PRICE	AMOUNT
	D/S CLEAR BELLIES 18/25	450	8394	22	1846.68
	D/S RIB BELLIES 20# AND UNDER.	750	8222	21½	1767.73
					3614.41

AUDITED

CHECK

16788
16788
1846.68

8222
16444
8711
1767.73

Federal Trade Commission
-or-
Swift & Co
Docket No 453
Commission Exhibit
No 114
Witness Jackson
Minnie E Kelsey
March 17-1921

Comm. Ex. 116

No._____

CREDIT APPLICATION.

DATE RATED	AMOUNT	TERMS

Sheet No._____

Name Moultrie Packing Co

Address Moultrie Ga.

Federal Trade Commission
vs
Empire
Docket 643
Exhibit 116
Dec 28-1923
Edwin Hilley Master
Master's Exhibit
Respondent

1923		Folio	✓	DEBITS	DATE	Folio	✓	CREDITS
Jan	15	266	✓	920	Bord			87280
		2	✓	367	Dec 20		✓	28805
	20	267	✓	333	" 27	419	✓	30351
	22	269	✓	31476	Jan 9	121	✓	7485
Jan	17	285	✓	32045	" 31	130	✓	26965
	9	293	✓	18620	Jan 10	196	✓	35465
	15	299	✓	33905	" 15	245	✓	16926
		-	✓	29621	" 17	862	✓	43012
	-	3	✓	783	" 22	392	✓	16182
		5	✓	33760	" 24	402	✓	34922
	24	11	✓	34782	" 29	5	✓	19212
	31	17	✓	16926	Feby 31	10	✓	40224
	3	10	✓	43072	Feby 5	73	✓	13398
	-	23	✓	1598	-	105	✓	32916
	12	29	✓	25004	" 8	114	✓	34765
		-	✓	26104	" 12	400	✓	18881
	14	31	✓	19212	" 14	254	✓	40696
	-	-	✓	40224	" 21	316	✓	2678
	17	35	✓	18565	-	347	✓	40470
	-	37	✓	32915	Mar 1	28	✓	59586
Mar	1	47	✓	18871	" 6	119	✓	61818
	-	-	✓	40696	" 14	214	✓	51916
	7	53	✓	23148	" 21	299	✓	58447
	-	-	✓	20000				
	13	61	✓	29586				
	-	-	✓	30000				
	20	65	✓	25000				
		-	✓	36913				
		Bord						83516
				763547				763547

DATE	Folio	✓	DEBITS	DATE	Folio	✓	CREDITS
Mar 27	70	✓	26916	Mar 27	73		26916
	-	✓	36000	Bord			
	-	✓	28147	" 7	16	✓	69422
	81	✓	30000	" 11	107	✓	16269
	89	✓	30000	" 13	108	✓	35065
	-	✓	28147	" 18	209	✓	42280
	-	✓	11475	" 25	252	✓	41100
	91	✓	24000	April 2	9	✓	44358
	95	✓	23700	" 9	121	✓	32491
	-	✓	23721	" 15	160	✓	36577
	101	✓	24000	" 23	219	✓	38841
	-	✓	23421	" 28	272	✓	10625
	106	✓	5900	" 30	284	✓	39102
	-	✓	19471	May 7	55	✓	10925
	-	✓	7000	" -	56	✓	28970
	102	✓	21				
May 7	113	✓	20000				
	-	✓	21134				
	121	✓	22000				
	-	✓	22848				
	125	✓	15000				
	-	✓	19471				
Jan 1	135	✓	18000				
	✓	✓	17529				
	137	✓	8500				
	139	✓	18891				
			1223[illegible]				
			583912				

Sheet No. _____

Name Moultrie Packing Co.

Address Moultrie Ga.

No. _____

CREDIT APPLICATION.

DATE RATED	AMOUNT	TERMS

DATE	Folio	✓	DEBITS	DATE	Folio	✓	CREDITS	DATE	Folio	✓	DEBITS	DATE	Folio	✓	CREDITS
June 12	143	✓	25000	June 7	109	✓	88457								
"	"	✓	24701	June 14		✓	29741								
" 19	149	✓	20000	" 21	198	✓	16029								
"	"	✓	18946	" 25	217	✓	10930								
" 27	155	✓	14741	" 28	260	✓	14554								
"		✓	15000	July 5	64	✓	16444								
"	159	✓	195	" 12	97	✓	5750								
"	"	✓	90	" 20	193	✓	90								
July 4	193	✓	26959	" 19	972	✓	5750								
" 20	212	✓	13038	Aug 11	105	✓	31108								
Aug 6	229	✓	35000	" 13	117	✓	10575								
" 22	239	✓	31108	" 17	155	✓	41482								
Sept 10	261	✓	10575	✓											
Nov 6	281	✓	41482	✓											

Reverse side of Comm. Ex. 116

Comm. Ex. 115

No.

CREDIT APPLICATION.

DATE RATED	AMOUNT	TERMS

Sheet No.

Name Moultrie Packing Co.

Address Moultrie, Ga

Federal Trade Commission
vs
Swift & Co
Docket No 463
Exhibit No 116-A
Witness - Morris
March 22/1921
Reporter [illegible]

DATE		Folio	✓	DEBITS	DATE		Folio	✓	CREDITS	DATE		Folio	✓	DEBITS	DATE		Fol.	✓	CREDITS
Oct	9	110	✓	51 65	Oct	1	30 105	✓	8 37			Fwd		3099 00	Fwd				7014 57
	30	132	✓	3 15	Oct	7	123	✓	43 28	Jan	12	258	✓	261 25	Mar	20	398	✓	215 50
Nov	5	138	✓	406 94		13	247	✓	25 44		19	426	✓	166 44		17	414	✓	35 25
Dec	3	160	✓	412 84		14	271	✓	113 94		-	427	✓	204 91		22	496	✓	391 86
	16	178	✓	392 14		21	436	✓	121 43		22	478	✓	68 00		24	498	✓	169 28
	31	192	✓	509 21		25	540	✓	149 28		24	496	✓	119 92		27	543	✓	33 00
Jan	4	214	✓	255 46		28	542	✓	48 53		26	579	✓	165 11		29	565	✓	45 33
	-	-	✓	452 31		-	543	✓	117 36		-	580	✓	152 06		-	626	✓	8 33
Feb	1	230	✓	226 32	Nov	1	34	✓	130 54	Feb	1 1/31	4	✓	62 93	Apr	1	29		264 00
	-	-	✓	388 88		4	117	✓	67 19		2	75	✓	280 35		13	221		40 00
	12	242	✓	4 95		5	123	✓	49 22		-	76	✓	12 60		-	222		178 55
	-	-	✓	3 38		8	144	✓	144 86		2	99	✓	74 45		5	258		221 43
	15	244	✓	426 69		11	231	✓	104 17		9	217	✓	180 53		19	325		245 92
	28	258	✓	442 43		12	233	✓	143 11		11	234	✓	32 00		25	441		250 00
Mch	7	270	✓	404 22		-	234	✓	41 08		16	403	✓	342 16	May	3	49		109 53
	13	278	✓	501 21		19	352	✓	135 44		21	437	✓	72 63		10	143		89 13
	20	284	✓	647 86	Dec	1	308	✓	80 00		-	438	✓	38 80		17	236		50 45
Apl	5	4	✓	375 60		3	62	✓	222 79		23	502	✓	194 27		24	356		37 01
	8	8	✓	239 74		8	149	✓	30 00		24	507	✓	68 63		30	-		27 50
	5	10	✓	12 39		9	228	✓	185 46		18	513	✓	29 46	June	6	120	✓	49 88
	"	"	✓	6		-	288	✓	40 00		25	515	✓	30 75					
	17	16	✓	454 24		15	291	✓	30 00	Mar	1	113	✓	248 56					
	28	26	✓	415 44		16	293	✓	347 72		8	214	✓	470 83					
						-	342	✓	104 59		10	262	✓	32 48					
May	4	32	✓	241 50		22	388	✓	30 00		13	263	✓	131 46					
	17	44	✓	202 28		-	389	✓	196 32		-	264	✓	75 80					
June	7	62	✓	301 86	Jan	1	29 113	✓	285 25		14	309	✓	380 19					
	12	66	✓	47 88		6	115	✓	103 63		20	297	✓	26 00					
		Fwd		1554 20			Fwd		3099 00			Fwd		7015 57					

Sheet No. _____

Name

Address

Moultrie Packing Co.,
Moultrie, Ga

No. _____
CREDIT APPLICATION.

DATE RATED	AMOUNT	TERMS

DATE	Folio	✓	DEBITS	DATE	Folio	✓	CREDITS
June							
				Balance			155430
21	74	✓	3362	June 14	214	✓	3362
July 6	94	✓	6786	28	400	✓	6786
" 14	102	✓	5284	July 6	37	✓	5284
"	"	✓	60	12	168	✓	1771
" 17	104	✓	310	14	169	✓	8765
" 24	110	✓	10536	20	272	✓	4955
" 31	116	✓	150430	Aug 1	119	✓	7600
				"	120	✓	9446
Aug 11	128	✓	7663	3	122	✓	6717
"	"	✓	63	"	157	✓	1718
" 31	146	✓	21837	10	162	✓	6845
"	148	✓	365	17	324	✓	7280
Sept 20	171	✓	16750	24	357	✓	3553
" 23	177	✓	102	"	369	✓	4569
Oct 5	197	✓	16682	Sept 1	17	✓	10993
" 9	191	✓	17217	"	111	✓	8070
" 12	201	✓	554	14	221	✓	4037
" 17	205	✓	21918	21	319	✓	4575
Nov 2	217	✓	496	✓	384	✓	9791
" 8	221	✓	17251	28	437	✓	7426
" 8	223	✓	415	Oct 3	42	✓	4575
" 15	229	✓	23191	5	81	✓	7935
" 21	239	✓	24858	12	169	✓	9405
" 28	241	✓	29170	19	280	✓	17355
"	243	✓	165	25	369	✓	17741
Dec 5	251	✓	29820	30	419	✓	1550
"	261	✓	30005	Nov 1	525	✓	4050
			334031				334031

DATE	Folio	✓	CREDITS
Brot			334031
Nov 2	46	✓	25275
" 8	116	✓	28120
" 15	217	✓	29820
" 21	326	× ✓	80005
" 24	352	✓	5100
" 28	390	✓	1050
			~~50000~~
			~~2042~~
Dec 1		✓	9968
		✓	20622
	5	184 ✓	32045
	13	199 ✓	15717
	15	205 ✓	2893
			534644

Reverse side of Comm. Ex. 116a

2385 Federal Trade Commission
vs.
Swift & Co.

Commission Exhibit 117 and

Docket No. 453
Exhibit No. 117
Date: March 21, 1921.
Reporter: Kehoe

July 12th, 1917.

Andalusia Packing Co.,
Andalusia, Ala.
Gentlemen:

It is currently reported that you have sold your plant to Swift & Co., and we are writing to ask you if this is the case.

We have had an opportunity to secure another very desirable Southern account, but we did not consider it, inasmuch as we were representing you. However, if you have disposed of your plant we would like to try and land this other account before it is too late.

Will appreciate it if you will advise us fully.

Yours respectfully,
THE J. W. CLARK CO., INC.
Pres. & Mgr.

FOM/C

(Written in) Identification "K"—Wit.—Miller 3/3/21 L. C. Algee.

2386 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 118
March 21, 1921.
Reporter: Kehoe.

July 20th, 1917.

Andalusia Packing Co.,
Andalusia, Ala.,
Gentlemen:

Replying to yours of the 16th, we note that the deal to sell your plant is still in the air, and that you will notify us later when you have any definite information. We are accordingly

going right along as usual, posting tickets to account sales, etc. We gathered the (copy not legible) your wire Saturday that you had probably closed the deal, since you were particularly anxious to have every ticket in and very accurate stock report.

We want to take this opportunity to express our appreciation of the manner in which you have handled the account with us. It has certainly been one of the most pleasant accounts we have had, and we should regret very much your selling out.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "L"—Wit.—Miller 3/3/21 L. C. Algee.

sion's
it No.

2387 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 119
Date March 21, 1921.
Reporter: Kehoe

July 28th, 1917.

Andalusia:—

We are in receipt of yours of the 25th per Mr. Conner, and note that sale of your plant has been consummated but that there will be no change in the management and policy. We have no other Southern connection, and, as stated before, our relations with you have been extremely pleasant. Of course, it is hard to tell now how matters will work out under the new ownership. In the meantime, we will give you the very best of representation we can, and will pay particular attention to getting in the accounts.

We note you are offering car load of sweet pickled reg. hams and sweet pickled skd. hams. We will do the best we can to place these.

Regarding lard prices, we have written you that we are very badly out of line. We think that we should have some relief as lard should be moved reasonably prompt at this season.

We also note your inquiry regarding sales of smo. hams, and wanting to know if a little reduction in price will be a help

to us. In reply will say that the whole town is apparently long on hams. The big Packers, one after another, have been making out prices to clean up stock, and the trade is pretty badly demoralized. We also find that we are having a lot of complaints since the weather has warmed up on your hams, account of being soft, and on shipments to country points several lots have soured, have become skippered, and have given us considerable trouble.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "M"—Wit.—Miller. 3/3/21 LCA.

2388 Federal Trade Commission
vs.
Swift & Co.

Commission Exhibit 120.

Docket No. 453
Exhibit No. 120
Date: March 21, 1921.
Reporter: Kehoe

August 9th, 1917.

Andalusia:—

We notice that Moultrie Packing Co. is making a very general price of 20½c on pure lard, and is selling 30 day contracts on this basis.

Your quotation is 22c which we have taken the liberty of shading to 21½c. You can appreciate that it is out of the question for us to do much business on practically the same lard at such a difference in price.

If you can give us any relief please do so.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "N"—Wit.—Miller 3/3/21 L. C. Algee.

on's No. 2389 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 121
Date: March 21, 1921
Reporter: Kehoe.

August 16th, 1917.

Andalusia:—

We received your wire of the 13th advising that you did not care to book any regular hams at less than 23c, and that you would have no fresh meat to ship this week.

When do you expect to commence killing again? The demand here is fine for fresh meat, and at good prices. We are looking forward to an enormous demand for all kinds of Packing House products from now on. The Government is turning loose millions of dollars here and this, with a good crop of 25c per lb. cotton, and with the country in prosperous condition anyway, leads us to believe that business is going to be almost unlimited.

Regarding hams. We can appreciate that 23c is low enough basis on the present cost of hogs, but there has been quite a pressure to sell hams on the part of the big Packers. Morris sold his Supreme skd. hams yesterday at 24½c. We may as well admit that it is entirely out of the question for us to get within ½c to 1c per lb. of the Packers best grade, corn fed hams, particularly during the summer. Of course, during the winter it doesn't make so much difference.

We wired you regarding Moultrie's price on lard of 20½c. We later found that he had Swift's authority for booking 30 day shipment at 20½c, and he sold 65,000 lb. on this basis. They then advanced him to 21½c.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "O"—Wit.—Miller 3/3/21 L. C. Algee.

2390 Federal Trade Commission
vs.
Swift & Co.

Commission Exhibit 122.

Docket No. 453
Exhibit No. 122
Date: March 21, 1921
Reporter: Kehoe.

Sept. 12th, 1917.

Andalusia:—

We are enclosing you order for shipment as soon as possible. Understood from your wire that you would not be able to ship this week, and we thought possibly if you had the order in hand you could make shipment the latter part of the week.

The billing on last car just received this morning, and we note that prices billed are somewhat higher than the last quotation we had from you. However, we were able to get an overage from your quotations on pretty well everything. We would like to have you mail us your price list each week as a guide, as we certainly want to meet your ideas on prices.

You will note that on smoked hams we are getting considerably better than your requests. We are pleased to say that smoked meats are moving out very nicely.

The beef you shipped is extremely rough and do not believe we can get more than 10c for it, which we understand will be satisfactory, as it is in line with conversation we had with Mr. Conner a few days since.

In regard pure lard, we could use some 6/10's, 12/5's and 60 lb. tubs very nicely here, so if you have any you might include them in the car, up to two or 3,000 lb.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "P"—Wit.—Miller 3/3/21 Algee.

's No. 2391 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 123
Date: March 21, 1921
Reporter: Kehoe.

Sept. 18th, 1917.

Andalusia Packing Co.,
Andalusia, Ala.

Gentlemen:

We are in receipt of yours of the 13th per GDR regarding selling prices, we note you state that we are showing substantial losses on each consignment closing and that you are invoicing product to us on strict f.o.b. Andalusia basis.

It has always been customary for the Andalusia plant to bill us on basis of selling prices Atlanta, including commission and freight.

In looking up our records we find that there has only been three consignments made since the new management took over the plant, viz., No. 67 which we note is closing out about $15.00 over invoice price; No. 68 which has just arrived, having been in transit since August 28th; and No. 69 on which we have not figured closing. It would appear that you were figuring on consignments which were shipped prior to change of ownership.

We have before us your price list of Sept. 8th, which prices we understand to be delivered Atlanta, and, of course, include brokerage, and we sold a good part of consignment 69 on basis of this price list before we received your invoice which was dated the 10th, although shipment was made on the 8th.

We note your price list of the 8th quotes skinned shoulders 20½c, your invoice 21c; pork loins, price list 26½c, invoice 27c; pigs, price list 20½c, invoice 21c; fresh hams, price list 22½c, invoice 23c; etc.

We do not understand how prices on your invoice can mean f.o.b. Andalusia, freight and commission to be added, while practically every price is ½c over your selling quotations.

In regard beef which you shipped in this car, Mr. Conner advised us over the telephone that these canners could be sold 10 to 10½c. At any rate, it was certainly as much
2392 as they would bring, as there was nothing to them.

On skinned hams we were able to get 25c and better

for most of them, although we understood 24c to be your selling price.

There is evidently some misunderstanding somewhere in the way you billed this car out. We would like to have you go into this fully and advise us on what basis future shipment will be invoices.

We would also like to have you send us each Saturday a price list for our guidance. Said price list to, of course, include freight and commission. This is necessary because we made sales ahead against cars shipped, and in case of changes in prices we would be posted on Monday and would know just how to handle.

Awaiting your further advice, we are

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM/C

Identification "Q"—Wit.—Miller 3/3/1921 LCA

2393 Federal Trade Commission
vs.
Swift & Co.

Commission Exhibit 124.

Docket No. 453
Exhibit No. 124
Date: March 21, 1921.
Reporter: Kehoe.

Sept. 22nd, 1917.

Andalusia Packing Co.,
Andalusia, Ala.

Gentlemen:

We hope you will be able to make us up a car for shipment Tuesday of fresh pork hams, pork loins, pigs, skinned shoulders, spareribs, a little lard in 60 lb. tubs and 6/10's, and up to 40 cases each smoked, skinned and regular hams. Ship half of the skinned and half the regular hams unwrapped.

Please wire us what you are shipping.

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM/C

Identification "R"—Wit.—Miller 3/3/21. Algee.

2394 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 125
Date: March 21, 1921
Reporter: Kehoe.

Sept. 24th, 1917.

Andalusia:—

We acknowledge receipt of yours of the 22nd per GBR regarding your basis of billing. There seems to have been a general misunderstanding.

As we understand it now, prices on list which you are sending us are supposed to be cost f.o.b. Andalusia, the same as Swift's regular green list to Branch Houses. It has been customary heretofore for Andalusia Packing Co. to send us this list as selling basis, including our commission and freight.

Now that the matter is fully understood we will be governed accordingly on future cars. However, the cars received today will show some sales which will net you less than your list, for the reason that we made up our price list and made sales against your last week's quotations, which, as stated, we understood to be the selling price.

May say that it is customary with pretty well all shippers to quote brokers a selling price, including commission, etc. Of course, it is as broad as it is long,—simply a matter of our understanding your method of billing.

We note your quotation on pure lard 25½c net to you, f.o.b. Andalusia. We note Moultrie's selling price on this lard is 24½c to 25c, making our quotation very much higher.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "S"—Wit.—Miller 3/3/21 LCA.

2395 Federal Trade Commission
vs.
Swift & Co.

Commission Exhibit 126 and

Docket No. 453
Exhibit No. 126
Date: March 21, 1921
Reporter: Kehoe.

Oct. 4th, 1917.

Andalusia:—

We are in receipt of your wire in which you state you are unable to ship our order of Sept. 27th account of not having sufficient assortment. When do you figure that you are going to start killing enough hogs and accumulating enough smoked meats and lard to take care of our orders? We have several thousand pounds of smoked hams sold now at 26 to 27c, as well as considerable quantity at lower prices. The demand is very good on both provisions and fresh pork, and we would like very much to get very liberal shipments. Will appreciate it if you will write us and tell us just what you think you will be able to do.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification "T"—Wit.—Miller 3/3/21 LCA.

2396 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 127
Date: March 21, 1921
Reporter: Kehoe.

Oct. 15th, 1917.

Andalusia:—

Replying to yours of the 12th per Mr. Rogers regarding sale to J. G. Cato of 5,000 lb. smo. reg. hams at 23c, we hand you herewith our entire file from which you will note that the order was accepted, and a part of it was shipped.

When do you think that you will be able to make shipment of regular hams again? We would dislike to ship skinned

hams on this contract, and we do not think it will be necessary provided we could get the regulars sometime in the near future.

Regarding our order No. 70, we merely submitted these orders, which were the prices at which our competitors were selling and were in line with your quotation as we understood it. It has been customary right along for Andalusia plant to furnish us selling prices which were on the same blanks that you are now using for cost list. Had you written us right back at the time that you could not accept the orders it would have been entirely all right, but in the absence of any advice from you, we naturally figured that you shipped the lard as ordered, and so advised our trade.

If you are willing to make shipment of this lard we will waive our brokerage entirely, but both of these concerns are good customers and we do not want to leave them under the impression that the orders were not filled because the market has advanced. Please advise us.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM/C

Identification ',U''—Wit.—Miller. 3/3/21 LCA.

2397 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 128
Date: March 21, 1921.
Reporter: Kehoe.

Oct. 23rd, 1917.

Andalusia:—

We are in receipt of your invoice on 83 pigs. We find White Provision Co. getting 23c today on pigs, also a little easier market on cuts. We have sold quite a good many today at 23 to 23½c. We understood that 23c or over would be satisfactory.

We note your quotation on pork cuts which are about in line with the Western market. Dold is selling fresh pork loins today from the West at 30 to 30½c. In fact, pretty well all the Packers are getting these prices.

Shoulders and pork hams from Moultrie and other South-

ern plants were sold last week at 25 to 26c on shoulders and 26 to 28c on hams.

This for your information.

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM/C

Identification "V"—Wit.—Miller. 3/3/21 Algee.

2398 Federal Trade Commission
vs.
Swift & Co.

Commission's Exhibit 129.

Docket No. 453
Exhibit No. 129
Date: March 21, 1921.
Reporter: Kehoe.

Oct. 23rd, 1917.

Andalusia:—

Car containing pigs came in yesterday and we disposed of about 25 at 23 to 23½c, but we soon found that Swift was making a very general price on Moultrie pigs of 21c, and in some instances as low as 20c, and the result is that we have not been able to move any pigs much today.

White Provision Co. has been getting 23c all the week and we do not understand why the local branch house found it necessary to make a price as low as they have. Their price on cuts is running 29 to 30½c on pork loins, including Western loins, 25 to 26c on skinned shoulders, and 27 to 28c on pork hams.

We are having some good pork weather and the market may firm up a little before the end of the week. If you are in position to ship a small car to reach us Thursday or Friday we will be pleased to have you wire us.

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM:C

Identification "W"—Wit.—Miller. 3/3/21 LCA.

2399 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 130
Date: March 21, 1921
Reporter: Kehoe.

Oct. 23rd, 1917.

Andalusia:—

We are in receipt of yours of the 15th per GDR in which you advise that it will probably be some time before you can make regular shipments, and also that we are to sell nothing for your account except what we have in stock or rolling. We will be governed accordingly.

We note what you say regarding filling outstanding contracts, and we trust that you will ship the few lard orders you have in hand, also that you will ship us 1,000 lb. smoked skinned hams in first car moving as we figure this will take care of all the hams orders we have both regular and skinned, with the exception of the Cato order.

Also ship 25/60's pure lard which will take care of all lard orders.

Yours respectfully,
THE J. W. CLARKE CO., INC.
Pres. & Mgr.

FOM:C

PS.—Also please ship 25/20# lb. net weight pails of lard to take care of orders.

Identification "X"—Wit.—Miller. 3/3/21. LCA

2400 Federal Trade Commission
vs.
Swift & Co.

Docket No. 453
Exhibit No. 131
Date: March 21, 1921
Reporter: Kehoe.

Oct. 24th, 1917.

Andalusia:—

Regret we are forced to put our price down to 22c on pigs

today in order to meet branch house price on car they got in from you. We have heard of them making some prices as low as 21c. However, their general price seems to be 22c.

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM:C

Identification "Y"—Wit.—Miller. 3/3/21 LCA.

2401 Federal Trade Commission
vs.
Swift & Co.

Commission's Exhibit No. 132.

Docket No. 453
Exhibit No. 132
Date March 21, 1921
Reporter: Kehoe.

June 22nd, 1917.

Andalusia:—

We note that you are billing beef this week at 14½c. Regret to say that the beef market here is in very bad shape, i. e., there is a lot of grass cattle similar to what you are shipping coming in, and it is being sold cheap. The packers are getting liberal receipts of beef from Texas.

Swift sold Cash Market 5 very nice, smooth, well covered cattle yesterday at 10c.

Moultrie Packing Co. offered the beef they got in at 10c.

White is asking 12c, but on better grade beef.

Packers are selling a lot of very nice, heavy fronts at 9 to 10c.

We will do the very best we can on this beef, but unless your billing is going to be very much cheaper it is probably best not to ship any more at present. Think we can possibly sell this beef at 12 to 12½c.

Yours respectfully,

THE J. W. CLARKE CO., INC.

Pres. & Mgr.

FOM:C

Identification "Z"—Wit.—Miller. 3/3/21. LCA

ssion's
it No.
referred

2402 COMMISSION'S EXHIBIT No. 133.

Stub book of Florida Nat'l. Bank.
Witness Samuel T. Smith.
Sent to Circuit Court with other physical exhibits.

ssion's
ibits Nos.
139, inc.

2403 (EXHIBITS 134-139, INC.)

Tabulation of Products
Sold to Jefferies Market, Jacksonville, Fla.
By Moultrie Packing Co.

Ex.#	Date	Product	Quantity (lbs.)	Price	Amount
	7-3-17	Pork Loins	216	23½	50.76
134	7-3-17	Pork Hams	101	20½	20.71
	7-3-17	Pork Shoulders	173	20½	35.47
	7-3-17	D.S.Bellies	200	22½	45.00
	7-3-17	Beef Tongues	100	12½	12.50
	7-10-17	D.S.Bellies	200	22½	45.00
135	7-10-17	Beef Tongues	100	12½	12.50
136	7-19-17	Beef Tongues	100	12½	12.50
	7-19-17	D.S. Rib Bellies	200	22½	45.00
	9-11-17	FR PK Loins	100	27	27.00
137	9-11-17	FR PK Hams	732	23	168.36
	9-11-17	FR PK Shoulders	526	22	115.72
	9-13-17	REG. SMO. Hams	207	24¼	50.20
138	9-13-17	SMO SKD HAMS	220	25¼	55.55
	9-17-17	FR PK Shoulders	547	22	120.34
139	9-17-17	FR PK Hams	657	23	151.11
	9-17-17	FR PK Loins	531	27	143.37

2404 EXHIBIT No. 140.

Commission's Exhibit 140.

Docket No. 435.
Witness: Bryce.
March 23, 1921

Statement of Purchases of Swift & Company,
Jacksonville, Fla.
From
Moultire Pkg. Co., Moultire, Ga.
Year 1917

Date	Car	Amt.
July 20, 1917		$4958.36
" 27,	Local	79.69
Aug. 2,	No.4346	2230.20
" 10,	No.7671	2464.17
" 13,	Local	102.37
Sept.25,	No.11460	1367.28
" 25,	No.11460	876.33
" 29,	Local	64.00
" 29,	"	2384.09
" 29,	"	5.25
Oct. 9,	No.11460	2008.07
" 17,	No.11460	2398.82
" 17,	No.11460	18.60
" 25,	No.10558	2373.03
" 25,	Local	8.13
" 26,	"	67.10
" 30,	"	7.25
Nov. 1, 1917	"	7.25
" 5, "	"	7.32
" 6, "	"	7.00
" 9, "	No.14185	2784.39
" 12, "	Local	7.25
" 15, "	No.11618	2029.26
" 21, "	Local	7.00
" 23, "	"	7.07
" 23, "	"	141.14
" 27, "	"	7.07
" 27, "	No.10791	2075.09
Dec. 4, "	Local	7.00

EXHIBIT 141.

" 4, "	No.11353	3445.25
" 10, "	Local	7.19
" 13, "	"	7.20
" 12, "	No.10212	3437.07
" 20, "	No.12710	2353.56
" 24, "	No.13483	2289.53

Statement of Purchase of Swift & Company, Jacksonville, Fla., from Moultrie Plant of Swift & Company, Moultrie, Ga. Year 1917.

2405

EXHIBIT No. 142.

Docket No. 453
Witness: Fitzpatrick.
March 23, 1921.

Entries taken from J. F. Fitzpatrick's book which was introduced in evidence as Commission's Exhibit No. 142, at Jacksonville hearing, March 23, 1921.

1917			
April	21	Moultire Packing Co.	$ 32.02
	23	Smith Richardson & Co.	1.69
	23	" " "	4.00
	23	Summerlin & Co.	29.32
	24	Cudahy Packing Co.	1.60
	25	Smith Richardson & Co.	9.88
	26	Moultire Packing Co.	22.84
	26	Smith Richardson & Co.	.91
	26	Cudahy Packing Co.	.95
	26	Cudahy Packing Co.	3.43
	27	Summerlin & Co.	15.45
	27	Smith Richardson & Co.	8.03
	27	Cudahy Packing Co.	4.20
	28	Cudahy Packing Co.	3.05
	28	Cudahy Packing Co.	20.43
	30	Smith Richardson & Co.	2.13
May	1	Cudahy Packing Co.	2.04
	1	Smith Richardson & Co.	9.35
	2	Cudahy Packing Co.	5.58
	2	Moultrie Packing Co.	37.27

	4	Smith Richardson & Co.	1.19
	4	Cudahy Packing Co.	1.80
	5	" " "	7.66
	5	" " "	12.94
	5	Smith Richardson & Co.	10.58
	5	Summerlin & Co.	12.90
	8	Smith Richardson & Co.	3.85
	9	" " "	10.42
	9	Cudahy Packing Co.	1.72
	9	Moultrie Packing Co.	42.67
	10	Smith Richardson & Co.	4.15
	10	Smith Richardson & Co.	2.08
	12	Summerlin & Co.	9.44
	12	Smith Richardson & Co.	14.83
	12	" " "	5.17
	16	" " "	5.81
	16	Moultrie Packing Co.	43.25
	16	" " "	3.24
2406			
May	17	Smith Richardson & Co.	$ 4.86
	18	" " "	1.56
	19	Summerlin & Co.	7.52
	19	Kingan & Co.	8.60
	19	Smith Richardson & Co.	2.92
	21	" " "	1.67
	22	Summerlin & Co.	7.84
	22	Moultrie Packing Co.	21.80
	22	Smith Richardson & Co.	3.25
	23	" " "	4.82
	23	Kingan & Co.	2.59
	23	Moultrie Packing Co.	13.74
	24	Smith Richardson & Co.	4.86
	24	Kingan & Co.	5.06
	25	Kingan & Co.	8.86
	25	" "	13.88
	25	Smith Richardson & Co.	.98
	26	" " "	1.28
	28	" " "	6.04
	29	" " "	1.32
	30	Kingan	12.00
	30	Smith Richardson & Co.	1.44
	30	" " "	3.06

	30	Moultrie Packing Co.	37.72
	30	" " "	19.87
	31	Smith Richardson & Co.	12.78
June	1	Kingan & Co.	4.35
	1	" "	6.15
	2	Smith Richardson & Co.	4.69
	4	" " "	3.62
	5	Kingan & Co.	6.44
	6	" "	3.58
	6	" "	5.00
	6	Smith Richardson & Co.	3.88
	7	Kingan	2.40
	8	Smith Richardson & Conroy	4.87
	9	Kingan & Co.	4.87
	9	Smith Richardson & Co.	4.20
	9	Smith Richardson & Conroy	4.01
	9	Summerlin & Co.	10.08
	9	Moultrie Packing Co.	33.87
	12	Smith Richardson & Conroy	2.06
	13	" " "	.72
	13	Kingan & Co.	6.32
	14	Moultrie Packing Co.	32.24
	14	Smith Richardson & Conroy	4.20
	14	Kingan & Co.	5.07
	15	Smith Richardson & Conroy	5.45
	16	" " "	3.40
	16	" " "	1.86
	16	Kingan & Co.	8.94

2407

June	18	Smith Richardson & Conroy	$ 1.61
	18	Kingan & Co.	1.70
	19	Moultrie Packing Co.	32.24
	19	Smith Richardson & Conroy	3.01
	20	Kingan	3.82
	21	Moultrie Packing Co.	23.38
	21	Smith Richardson & Co.	8.30
	22	Kingan & Co.	8.33
	22	Smith Richardson & Conroy	11.34
	22	" " "	1.40
	23	" " "	2.40
	23	" " "	7.75

	23	Kingan & Co.	3.29
	23	" "	4.05
	23	" "	3.65
	25	" "	5.00
	25	Smith Richardson & Conroy	4.07
	26	Kingan & Co.	4.00
	26	" "	5.50
	26	Smith Richardson & Conroy	1.68
	27	" " "	4.00
	27	" " "	1.60
	28	" " "	1.86
	28	" " "	4.93
	28	Kingan & Co.	3.70
	29	" "	4.21
	30	Smith Richardson & Conroy	11.11
	30	" " "	2.99
	30	Kingan & Co.	25.89
July	2	Smith Richardson & Conroy	1.68
	2	Kingan & Co.	1.70
	3	" "	8.82
	3	Smith Richardson & Conroy	6.75
	5	Moultrie Packing Co.	20.25
	5	Smith Richardson & Conroy	8.11
	5	Kingan & Co.	3.58
	5	Smith Richardson & Conroy	2.24
	6	Kingan & Co.	5.85
	6	Smith Richardson & Conroy	1.25
	7	Kingan & Co.	18.68
	7	Smith Richareson & Conroy	110.27
	9	Kingan & Co.	3.25
	9	Smith Richardson & Conroy	1.32
	9	" " "	4.93
	10	Kingan & Co.	3.99
	10	" "	6.66
	11	Smith Richardson & Conroy	5.23
	11	Kingan & Co.	7.60
	12	Moultrie Packing Co.	16.18
	12	" " "	7.41
	12	Smith Richardson & Conroy	3.16

2408

July	12	Kingam & Co.	$ 1.88
	13	Smith Richardson & Conroy	3.79
	14	Kingan & Co.	8.99

	14	Smith Richardson & Conroy	6.00
	14	" " "	3.93
	14	Kingan & Co.	8.79
	16	" "	1.55
	16	Smith Richardson & Conroy	1.76
	16	" " "	2.00
	17	" " "	3.57
	17	Kingan & Co.	17.48
	18	Smith Richardson & Co.	7.59
	19	Moultrie Packing Co.	21.82
	19	Kingan & Co.	5.06
	19	" "	3.98
	20	Smith Richardson & Conroy	13.91
	20	" " "	1.80
	20	" " "	1.32
	20	" " "	1.80
	21	Kingan & Co.	11.40
	23	" "	4.10
	23	Smith Richardson & Conroy	5.83
	23	" " "	1.36
	24	" " "	3.26
	25	" " "	1.70
	25	Kingan & Co.	10.33
	26	" "	7.68
	27	" "	4.20
	28	N. Farris	1.54
	28	Smith Richardson & Conroy	1.99
	28	Kingan & Co.	22.30
	28	Summerlin & Co.	6.58
	30	Kingan & Co.	12.27
Aug.	1	N. Farris	2.20
July	19	Smith Richardson & Co.	1.44
Aug.	1	Kingan & Co.	1.88
	1	Smith Richareson & Conroy	1.48
	1	" " "	1.82
	3	N. Farris	1.75
	2	Kingan & Co.	8.98
	3	" "	2.00
	4	Smith Richardson & Conroy	2.59
	4	Kingan & Co.	2.68
	4	N. Farris	12.50
	4	Kingan & Co.	12.48
	4	Smith Richardson & Conroy	4.10
	4	Kingan & Co.	6.42

	6	Kingan & Co.	1.82
	6	" "	1.80
	7	Smith Richardson & Conroy	4.49
2409			
Aug.	8	N. Farris	$ 1.75
	8	" "	1.80
	8	" "	.90
	8	Kingan & Co.	5.22
	9	N. Farris	2.56
	10	Smith Richardson & Conroy	1.69
	10	" " "	6.06
	10	N. Farris	2.42
	11	Smith Richardson & Co.	9.56
	11	N. Farris	23.54
	11	Kingan & Co.	6.75
	11	Summerlin & Co.	18.64
	13	Smith Richardson & Conroy	1.35
	14	Kingan & Co.	3.59
	14	N. Farris	1.87
	15	" "	1.80
	15	Kingan & Co.	4.30
	16	Kingan & Co.	2.78
	16	Smith Richardson & Conroy	4.3[illegible]
	17	N. Farrsi	3.94
	17	" "	.85
	17	Smith Richardson & Co.	1.86
	18	" " " Conroy	13.03
	18	Kingan & Co.	6.60
	18	N. Farris	14.48
	18	Smith Richardson & Conroy	2.65
	20	Summerlin & Co.	24.78
	20	Smith Richardson & Conroy	.98
	20	Kingan & Co.	5.40
	21	N. Farris	2.48
	21	" "	2.00
	21	Smith Richardson & Conroy	5.74
	22	N. Farris	5.22
	23	" "	8.26
	23	Smith Richardson & Conroy	2.38
	24	" " "	6.28
	24	Kingan & Co.	14.57
	25	N. Farris	20.64
	25	Kingan & Co.	1.60

	25	N. Farris	5.60
	25	Kingan & Co.	6.49
	27	N. Farris	1.20
	28	Kingan & Co.	3.34
	28	N. Farris	4.64
	29	Kingan & Co.	3.87
	29	N. Farris	2.77
	30	" "	2.55
	31	Smith Richardson & Conroy	8.34
	31	Wilson & Co.	8.40
	31	N. Farris	2.00
2410			
Sept.	1	N. Farris	$ 2.00
	1	Kingan & Co.	18.38
	1	Farris	13.32
	1	Smith Richardson & Conroy	7.43
	3	N. Farris	1.20
	3	Wilson & Co.	8.80
	4	Smith Richardson & Conroy	1.45
	4	Kingan & Co.	10.09
	5	N. Farris	1.80
	5	" "	2.81
	6	N. Farris	2.25
	6	Kingan & Co.	1.90
	7	N. Farris	1.72
	7	Smith Richardson & Co.	6.28
	8	N. Farris	7.74
	8	Smith Richardson & Co.	7.37
	8	Wilson & Co.	9.19
	8	Kingan & Co.	10.95
	10	Farris	1.68
	11	Kingan & Co.	9.62
	11	Smith Richardson & Co.	2.48
	11	N. Farris	1.00
	12	Summerlin & Co.	34.18
	12	Smith Richardson & Conroy	7.43
	12	N. Farris	1.76
	12	Wilson & Co.	8.23
	13	Moultrie Packing Co.	10.08
	13	Kingan & Co.	11.00
	13	Smith Richardson & Co.	1.80

2411 (EXHIBITS 143–145, INC.)

Commission's Exhibits 143-145

Tabulation of Products
Sold to Vinzant Bros., Main St., Jacksonville, Fla.
By Moultrie Packing Co.

Ex.#	Date	Product	Quantity (lbs.)	Price	Amount
	5–9–17	Pork Loins	54	23½	12.69
143	5–9–17	Smo. Reg. Hams	86	23½	20.21
144	5–15–17	Pork Loins	57	23½	13.40
145	5–22–17	Fr. Pk. Loins	53	23½	12.46

2412 (EXHIBITS 146 AND 147)

Commission's Exhibits 146 and 147

Tabulation of Products
Sold to Vinzant Bros., Jacksonville, Fla.
By Swift & Company.

Ex.#	Date	Product	Quantity (lbs.)	Price	Amount
	10–4–17	Pk. Hams (Moultrie)	22	26	5.72
146	10–4–17	Pk. Shoulders (Moultrie)	12	24	2.88
	10–5–17	Veal Front	32	15	4.80
147	10–5–17	Moultrie Pork Hams	15¼	26	3.97

Comm. Ex. 148

63-5

Florida National Bank

No. 299 JACKSONVILLE, FLORIDA 6/6 1917

PAY TO THE ORDER OF Moultrie Banking Co. (NO-PRO) $12 46

Twelve 46/100 DOLLARS

NOT OVER FOURTEEN DOLLARS

PAY TO THE ORDER OF
Moultrie Banking Company
Moultrie Packing Company

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
(Prior Endorsements Guaranteed)
JUN 6 1917
MOULTRIE BANKING CO.
64-200 Moultrie, Ga. 64-200
M. L. LEE, Cashier.

PAID THROUGH JACKSONVILLE CLEARING ASSOCIATION
ATLANTIC NATIONAL BANK
JUN 8 1917

1439

2414 (EXHIBITS 149-165, INC.)

Commission Exhibits 149-165.

Tabulation of Products
Sold to Cooke & Weeks, Jacksonville, Fla.
By Moultrie Packing Co.

Exhibit #	Date	Product	Quantity	Price	Amount
	1-3-17	Pork Loins	64	15½	9.92
	1-3-17	Pork Hams	63	15½	9.77
149	1-3-17	Pork Shoulders	24	12½	3.00
	1-3-17	Spare Ribs	15	12	1.80
	1-3-17	Franks	10	13½	1.35
	1-3-17	Dressed Pig	60	11	6.60
	1-10-17	Dressed Pig	59	11	6.49
	1-10-17	Pork Loins	70	15	10.50
150	1-10-17	Spare Ribs	15	12	1.80
	1-10-17	Pork Hams	44	15	6.60
	1-10-17	Pork Shoulders	30	12	3.60
	1-10-17	Frankforts	10	13½	1.35
	1-17-17	Pig Nice and Lean	71	11	7.81
151	1-17-17	Fr. Pk. Loins	71	16½	11.72
	1-17-17	Fr. Pk. Hams	39	16	6.24
	1-17-17	Spare Ribs	15	12	1.80
	1-17-17	Fr. Pk. Shoulders	34	12½	4.25
	1-17-17	Frankforts	10	13½	1.35

2415

(Ex. 149-165, inc., continued)

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
152	1-22-17	Fr. Pk. Loins	62	16½	10.23
	1-24-17	Dressed Pig	85	11	9.35
	1-24-17	Pork Loins	73	16½	12.05
153	1-24-17	Pork Hams	32	16	5.12
	1-24-17	Pork Shoulders	39	12	4.68
	1-24-17	Spare Ribs	15	12	1.80
	1-24-17	Frankforts	10	13½	1.35
	1-29-17	Fr. Pk. Loins	55	16½	9.08
154	1-29-17	Spare Ribs Out		12	
	1-30-17	Pig Lean	72	11	7.92
	1-30-17	Fr. Pk. Loins	54	17	9.18
155	1-30-17	(Short Cut Fr. Pk. (Hams. Must be small	34	16	5.44
	1-30-17	Fr Pk Shoulders	24	13	3.12
	1-30-17	Spare Ribs	15	12½	1.88
	2-5-17	Pork Loins	69	17	11.73
156	2-5-17	Spare Ribs Out, sorry		12½	

2416

(Ex. 149-165, inc., continued)

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
	2-17-17	Pork Hams	37	16	5.92
	2-17-17	Pork Shoulders	41	13	5.33
157	2-17-17	Spare Ribs	15	12½	1.88
	2-17-17	Pork Loins	80	17	13.60
	2-17-17	Dressed Pig	46	11	5.06
158	2-26-17	Fr. Pk. Loins	60	19	11.40
159	3-10-17	Pork Loins	60	20	12.00
	3-13-17	Fr. Pk. Loins	72	20	14.40
160	3-13-17	Fr. Pk. Hams	26	17	4.42
	3-13-17	Fr. Pk. Shoulders	45	15	6.75
161	3-19-17	Pork Loins	20	21	4.20
	3-21-17	Fr. Pk. Loins	70	21	14.70
162	3-21-17	Fr. Pk. Hams	30	17	5.10
	3-21-17	Fr. Pk. Shoulders	40	15	6.00
163	3-26-17	Pork Loins	61	21½	13.12

2417

(Ex. 149-165, inc., continued.)

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
	2-28-17	Fr. Pk. Loins	76	19	14.44
164	2-28-17	Fr. Pk. Shoulders	25	14	3.50
	2-28-17	Fr. Pk. Hams	26	16	4.16
	2-28-17	Spare Ribs	15	15	2.25
	3-27-17	Pork Loins	71	22	15.62
	3-27-17	Pork Hams	35	18	6.30
165	3-27-17	Pork Shoulders	40	16	6.40
	3-27-17	Smo. Reg. Hams	25	20½	13
	3-27-17	Spare Ribs	10	16½	1.65

ion's
its Nos.
82, Inc.

2418 (EXHIBITS 166-182, INC.)

Tabulation of Products
Sold to Cooke & Weeks, Jacksonville, Fla.
By Moultrie Packing Co.

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
	4-2-17	Reg. Smo. Hams	65	20½	13.33
166	4-2-17	Fr. Pk. Loins	64	22	14.08
	4-3-17	Fr. Pk. Loins	71	22	15.62
	4-3-17	Fr. Pk. Hams	34	18½	6.29
167	4-3-17	Fr. Pk. Shoulders	32	16½	5.28
	4-3-17	Reg. Smo. Hams	81	20½	16.61
	4-3-17	Spare Ribs	10	16	1.60
	4-3-17	Pig Lean	63	15	9.45
	4-18-17	Pork Loins	71	23	16.33
168	4-18-17	Pork Hams	25	19½	4.88
	4-18-17	Pork Shoulders	57	17½	9.98
	4-18-23	Spare Ribs	10	17	1.70
	4-18-23	Reg. Smo. Hams	101	23	23.23
	4-9-17	Fr. Pk. Loins	77	22	16.94
169	4-9-17	Fr. Pk. Hams	32	18½	5.92
	4-9-17	Fr. Pk. Shoulders	27	16½	4.46
	4-9-17	Reg. Smo. Hams	120	21	25.20
	4-9-17	Spare Ribs	10	16½	1.65
	4-9-17	Pig Lean	48	15	7.20

2419

(Ex. 166-182, inc. continued)

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
	4–9–17	Reg. Smo. Hams	52	21	10.92
170		Fr. Pk. Loins	65	22	14.30
	4–16–17	Pork Loins	60	22¾	13.65
171		Spare Ribs	10	17	1.70
172	4–30–17	Reg. Smo. Hams	48	23½	11.28
	5–2–17	Pork Loins	77	23½	18.10
		Pork Hams	19	19½	3.71
173		Pork Shoulders	32	18½	5.92
		Smo. Reg. Hams	102	23½	23.97
		Smo. Picnics	14	17½	2.45
	5–17–17	Reg. Smo. Hams	42	23½	9.87
174		Smo. Picnics	21	17½	3.68
		Fr. Pk. Loins	52	24	12.48
	5–9–17	Fr. Pk. Loins	54	23½	12.69
175		Fr. Pk. Shoulders	31	18½	5.74
		Fr. Pk. Hams	17	19½	3.32
		Reg. Smo. Hams	63	23½	14.81

2420

(Ex. 166-182, inc. continued)

Exhibit #	Date	Product	Quantity (lbs.)	Price	Amount
176	5-14-17	Fr. Pk. Loins	52	23½	12.22
	5-15-17	Fr. Pk. Loins	71	23½	16.69
177		Fr. Pk. Hams	40	19½	7.80
		Fr. Pk. Shoulders	41	18½	7.59
		Reg. Smo. Hams	121	24	29.04
	5-28-17	Fr. Pk. Loins	57	24	13.68
178		Fr. Pk. Hams	61	20	12.20
		Reg. Smo. Hams	108	24	25.92
	5-30-17	Fr. Pk. Loins	60	23½	14.10
		Fr. Pk. Hams	27	20	5.40
179		Fr. Pk. Shoulders	16	19	3.04
		Reg. Smo. Hams	185	24	44.40
180	6-10-17	Fr. Pk. Loins	52	23½	12.22
	6-19-17	Pork Loins	25	23½	5.88
181		Smo. Reg. Hams	160	24	38.40
		Pork Hams	17	20	3.40
	7-3-17	Pork Loins	21	23½	4.94
182		Pork Hams	22	20½	4.51
		Smo. Reg. Hams	123	24	29.52

1447

Schedule - A

RECEIVED

SEP 22 1917

2-3-4-5-6-7-8-9-10

MEAT INVESTIGATION.

SLAUGHTERING AND MEAT PACKING.—SPECIAL REPORT.

P. No. Fcd 5 - 05

NOTE.—The word "company," wherever used in this schedule, means corporation, partnership, or individual, as the case may be.

(If additional sheets are necessary to furnish the information required by any of the following questions, they should be given the number of the question to which they apply and attached to this report.)

1. Name of company Andalusia Packing Company
2. Form of business organization (corporation, partnership, individual, etc.) Corporation
3. Principal business office Andalusia Ala Bama
4. If a corporation, give: (a) State of incorporation Alabama
   (b) Exact date of incorporation October 17th 1913
   (c) Full name and post-office address of officers and directors:

OFFICERS.

Name.	Name.	P. O. Address.
President	T. E. Henderson	Andalusia Ala
"	J. J. Johnson	Geneva "
"	J. S. B. Milligan	Andalusia "
Sec'y Treasurer	A. C. Darling	" "

DIRECTORS.

Name.	P. O. Address.
T. E. Henderson	Andalusia Ala
J. J. Johnson	Geneva "
S. B. Milligan	Andalusia "
A. C. Darling	" "
W. S. Hutchinson	" "
S. W. May	Brantley "
A. S. Douglas	Opp "
J. L. Moore	Andalusia "
J. M. Wilson	" "
R. S. Wood	Red Level "
E. S. O'Neal	Andalusia "
E. L. Moore	River Falls "

5. If a partnership, give: (a) Date of partnership agreement, Corporation
   (b) Full name and post-office address of each partner:

Name. Post-office address.

FEDERAL TRADE COMMISSION
vs.
Docket No. 153 Exhibit No. 153
Commission's Date June 9/1921
Defendant's
Witness Colt Reporter Brady

Ideal, H. 22

Witness Henderson March 11, 1921
R. M.

200-1

Ser. R.H.D.

This Company started in July 1916 but did very little business before Oct 1st

16. Date on which this company's fiscal year closes March 31st 1917 Present Fiscal Year Closing

17. Attach to this report the following statements, for each year of the company's past five fiscal years: 3

(a) True balance sheet.

(b) True itemised profit and loss and income statements. } Attached

(c) True details of changes in surplus account during each fiscal year. None

This report and all attached statements signed this 20th day of September, 1917.

Andalusia Packing Company (Name of company.) By O B Bell Treasurer (Name and position of person signing; to be signed in person.)

200-9

2423

ANDALUSIA PACKING CO.
ANDALUSIA, ALA.
PROFIT AND LOSS STATEMENT.
From start of operations to May 1st, 1917.

PURCHASES			SALES		INVENTORY	
Cattle,	33,417.49		Beef	27,715.26	Beef	1,447.36
Less inventory	1,547.29		Hides	5,912.02	Edible Tallow,	259.20
		31,870.20	Fresh Pork	187,259.23	Fresh Pork	12,777.64
Hogs,	778,734.84		Shipper Pigs	103,388.34	Shipper Pigs	5,014.59
Less inventory	3,996.20		D. S. Pork	229,011.43	D. S. Pork	117,834.17
		794,738.64	Smoke	25,168.92	Smo. "	2,612.98
		826,608.84	Hams	30,905.03	Hams	82,535.93
D. S. Meats purchased,		7,550.00	Lard	122,161.43	Lard	22,645.78
		834,158.84	Sausage	13,332.53	Sausage	76.27
Labor		23,635.98	Pigs Feet	871.85	Pigs Feet	8.00
Operating		11,275.46	Grease	34,179.82	Grease	1,699.38
Repairs		1,217.79	Tankage	4,510.90	Tankage	268.20
Plant Protection		95.00	Hog Hair	1,376.44	Hog Hair	164.00
Supplies used		28,905.46		785,793.20		247,343.50
Freight		27,035.71				78,793.20
Drayage		243.84				
Selling Expense		20,241.20				
Fire Insurance		929.36				
Gen. Administrative Exp.		6,465.01				
Plant Administrative Exp.		3,413.87				
Taxes		483.70				
Interest		12,311.16				
Surplus		62,724.32				
		1,033,186.70				1,033,186.70

See letter of Oct. 9.

2424

PROFIT and LOSS STATEMENT

From start of Operations to May 1, 1917

Cattle and Hogs Purchased	832,152.33	Sales	788,865.71
Less Live Inventory 5/1	5,543.49	Less Claims and allowances	3,072.51
	826,608.84		785,793.20
Products Purchased	7,550.00	Inventory 5/1—	
	834,158.84	Beef products	1,706.56
		Pork "	245,636.94
Labor	23,635.98		
Operating	11,275.46		
Repairs	1,217.79		
Plant protection	95.00		
Supplies used	28,905.46		
Freight	27,035.71		
Drayage	243.84		
Selling Expense	20,241.20		
Fire Insurance	929.36		
Gen. Administrative Exp.	6,465.01		
Plant " "	3,413.87		
Taxes	483.70		
Interest	12,311.16		
Surplus	62,724.32		
	1,033,136.70		1,033,136.70

2425

ANDALUSIA PACKING COMPANY

Andalusia, Alabama.

ASSETS and LIABILITIES
as of May 1st, 1917.

ASSETS:		
Cash on hand	9.00	
" in Banks	44,030.10	
Contingent Fund	10.00	44,049.10
Inventory	261,079.09	261,079.09
Accounts Receivable	90,849.16	
Notes "	900.00	
Suspense Accounts	.....	
Sundry Items	677.09	
Deferred Expenses	2,072.82	94,499.07
Plant and Equipment	142,983.20	
Office furniture and Fixtures	1,314.93	144,298.13
		543,925.39
LIABILITIES:		
Capital Stock	133,250.00	133,250.00
Surplus	62,724.32	62,724.32
Accounts Payable	7,598.52	
Notes "	340,352.55	347,951.07
		543,925.39

2426 MAY 1st.

INVENTORY:	
Live Cattle	1,547.29
Live Hogs	3,996.20
Beef Products	1,706.56
Pork Products	245,636.94
Supplies	8,192.10
	261,079.09
SUNDRY ITEMS:	
Railroad Claims	677.09
DEFERRED EXPENSES:	
Fire Insurance	955.70
Interest	1,117.12
	2,072.82

2427

	Name of Holder	Address	Character of Obligation	Amount	Character of Security
1	O'Neal, Law & Co.	Andalusia, Ala.,	Note	10,420.00—	None.
2	P. N. Hickman	Geneva, Ala.	Note	5,400.00—	"
3	Farmers & Merchants Bank,	Troy, Ala.	"	12,500.00	Personal end.
4	Seaboard National Bank,	New York	"	12,500.00	" "
5	First National Bank	Montgomery, Ala.,	"	10,000.00	" "
6	First National Bank,	" "	"	10,000.00	" "
7	First National Bank,	Andalusia, Ala.,	"	5,300.00	None
8	C. S. O'Neal	" "	"	10,800.00	"
9	First National Bank,	Troy, Ala.,	"	10,000.00	Personal end.
10	First National Bank	" "	"	10,000.00	" "
11	Henry Opp,	Andalusia, Ala.,	"	32,400.00	" "
12	D. H. Morris,	Geneva, Ala.,	"	30,000.00	" "
13	S. B. Milligan,	Andalusia, Ala.,	"	10,000.00	None.
14	First National Bank,	Dozier, Ala.,	"	3,710.00	Personal end.
15	National Bank of Commerce,	Pensacola, Fla.,	"	30,000.00	" "
16	Farmers & Merchants Bank,	Troy, Ala.,	"	12,500.00	" "
17	F. K. Feagin,	Andalusia, Ala.,	"	8,000.00	None.
18	Andalusia Fert. Co.,	" "	"	27,192.55	"
19	Bank of Andalusia,	" "	"	10,000.00	Personal end.
20	Seaboard Nat. Bank,	New York	"	12,500.00	" "
21	Farmers Nat. Bank,	Geneva, Ala.,	"	6,000.00	" "
22	M. E. Donaldson,	Opp, "	"	10,400.00	" "
23	First Nat. Bank,	Enterprise, "	"	12,480.00	" "
24	" " "	Andalusia, "	"	10,400.00	" "
25	Seaboard Nat. Bank,	New York	"	12,500.00	" "
26	First Nat. Bank,	Montgomery, Ala.,	"	10,000.00	" "
27	First " "	Brantley, Ala.,	"	5,500.00	" "
				340,502.55	
				150.00	Interest on Expired Note Charged to Notes Payable in error.
				340,352.55	

2428 Received:
Sept. 22, 1917.
Endorsers of the Notes listed above:

3—A. C. Darling,	Andalusia,	Ala.
T. E. Henderson,	"	"
4—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
5—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
6—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
9—A. C. Darling,	"	"
T. E. Henderson,	"	"
10—A. C. Darling,	"	"
T. E. Henderson,	"	"
11—A. C. Darling,	"	"
T. E. Henderson,	"	"
12—A. C. Darling,	"	"
T. E. Henderson,	"	"
14—A. C. Darling,	"	"
T. E. Henderson,	"	"
15—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
16—A. C. Darling,	"	"
T. E. Henderson,	"	"
A. C. Darling,	"	"
17—T. E. Henderson.	"	"

2429 Endorsers of notes:

20—A. C. Darling	Andalusia,	Ala.
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
21—A. C. Darling,	"	"
T. E. Henderson,	"	"
22—A. C. Darling,	"	"
T. E. Henderson,	"	"
23—A. C. Darling	"	"
T. E. Henderson,	"	"
24—A. C. Darling,	"	"
T. E. Henderson,	"	"
25—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal.	"	"
26—A. C. Darling,	"	"
T. E. Henderson,	"	"
S. B. Milligan,	"	"
O. L. Benson,	"	"
J. L. Knox,	"	"
C. S. O'Neal,	"	"
27—A. C. Darling,	"	"
T. E. Henderson.	"	"

2430 September 24, 1917.

Andalusia Packing Company,
Andalusia, Alabama.

Gentlemen:

The Commission is in receipt of the schedule of slaughtering and packing sent you on August 27th, 1917, and finds that certain information in your report was incomplete.

Question 17 (b), on page 10, calls for itemized profit and loss and income statements. The profit and loss statement should show in detail the profits or losses in each branch or department of your business and the net profit or loss in your entire business. The income statement should show in de-

tail all the sources of income and the amount of income from each source. For example, it should show the dividends received from each corporation in which your company holds stock and the income from various branches and departments of your business, such as hide department, oleo department, dressed beef department, lard department, branch houses, etc. Your books of account undoubtedly show complete details with respect to profit and loss and income, and these details are required.

Your attention is directed to a statement in the National Provisioner of August 11, 1917, to the effect that Swift & Company, of Chicago, Illinois, had purchased your plant. Since your schedule did not make any mention of such a transfer, the Commission desires complete information with regard to this transaction. Kindly state in your report (a) whether the stock or the property, or both, was purchased by Swift & Co., (b) the reasons prompting the sale or transfer, (c) if there was no sale made, give the present and future relations of your company with Swift & Co.

Please find enclosed franked envelope for reply, which should be mailed to this office on or before October 5, 1917.

Very truly yours,

FEDERAL TRADE COMMISSION

By

Secretary.

EFH-v (Enclosures)

2431

F. T. C.
Received Oct. 13, 1917

The First National Bank

J. D. Henderson, Pres. Capital $100,000.00
W. F. Simmins, V. P. Surplus $100,000.00
Fox Henderson, V. P.
T. E. Henderson, Cashier Andalusia, Ala.
C. Bean, Ass't. Cashier

October 10th
1917

Mr. L. L. Bracken, Sec'y.
Federal Trade Commission,
Washington, D. C.

Dear Sir:

Referring to your letter of recent date addressed to the

Andalusia Packing Company with regard to the sale of this stock and in which you ask for the following information:

(b) The reasons prompting the sale or transfer.

Replying thereto beg to advise that the new owners asked us, (the old stockholders) to make them a price on all the capital stock of the corporation and with which request we complied, these negotiations resulting in the sale of the entire stock held by the stockholders prior to July 24th, 1917 to the present owners.

Yours very truly,
(Signed) T. E. HENDERSON (?)
Former President.

teh/b

2432

Andalusia Packing Company
Packers
Andalusia, Alabama

Oct. 9,
1917

(Received
Oct. 12, 1917)

Mr. L. L. Bracken,
Secretary Federal Trade Commission,
Washington, D. C.

Dear Sir:

Replying to your letter of September 24th:

Will say that we are enclosing herewith a more detailed report in connection with question 17-b, page 10.

You will note we have divided our purchases between cattle and hogs, also have divided inventory as to different kinds of products along with Separating our sales as to various products. Previous to two months ago, this concern did not compile loss or gain figures as to various products; therefore, we are compelled to report to you as per this statement.

Referring to last paragraph of your letter with reference to the article in the National Provisioner August 11th: Will say that this plant and business are still operated by the Andalusia Packing Company; however, the ownership has changed hands recently. Have referred to Mr. T. E. Henderson, Cashier of the First National Bank of Andalusia and formerly President of this Company—who with Mr. A. C. Darling, of this city, was the principal shareholder, your

inquiry as to reasons for the sale, and have asked him to reply to you direct.

We trust that this statement along with Mr. Henderson's letter will furnish the desired information.

Yours respectfully,
ANDALUSIA PACKING COMJANY.
Per (Signed) C. B. C.

Acctg. Dept.
CBC:PW

2433 December 24, 1917.

Andalusia Packing Company
Andalusia, Alabama.

Gentlemen:

The Commission requires that information be furnished it relative to the reported transfer of the ownership or control of the Andalusia Packing Co. If such transfer has been made, state to whom the transfer was made, the date of transfer, whether the stock or plant was sold, and the consideration received by the Andalusia Company stockholders therefor.

The Commission requires that this information be mailed to this office on or before January 1st, 1918. Enclosed find a franked envelope for the return of the same.

Very truly yours,
FEDERAL TRADE COMMISSION
By
Secretary

GAS-B
Enclosure

2434 December 24, 1917.

Andalusia Packing Company,
Andalusia, Alabama.

Gentlemen:

The Commission requires that information be furnished it relative to the reported transfer of the ownership or control of the Andalusia Packing Co. If such transfer has been made, state to whom the transfer was made, the date of transfer, whether the stock or plant was sold, and the consideration received by the Andalusia Company stockholders therefor.

The Commission requires that this information be mailed

to this office on or before January 1st, 1918. Enclosed find a franked envelope for the return of the same.

Very truly yours,
FEDERAL TRADE COMMISSION
By
Secretary.

GAS-B
Enclosure.

2435

Federal Trade Commission
Received
Jan. 17 1918

Union Stock Yards,
Chicago, Ill.,
January 11, 1918.

Federal Trade Commission,
L. L. Bracken, Secretary,
Washington, D. C.

Gentlemen:

Your letter of December 24th, 1917, per GAS, addressed to the Andalusia Packing Company, Andalusia, Ala., was not received by them until December 29th and there has been some delay in correspondence between that office and Chicago, which is the occasion of the delay in replying to your letter.

The stock of Andalusia Packing Company was transferred July 24, 1917, to the following named individuals in the amounts shown opposite their names:

T. E. Henderson	100	shares
T. H. Ingwersen	820	"
G. D. Rogers	100	"
H. C. Carr	820	"
W. B. Traynor	825	"
	2665	

which are all of the shares issued and outstanding. The stock is held for the benefit of Swift and Company.

I understand that the old stockholders received a consideration of $70. per share.

Yours very truly,
ANDALUSIA PACKING COMPANY
(Signed) C. A. PEACOCK,
Secretary.

1463

Duplicate

DOCKET DIVISION FILE
F.T.C. v. Swift & Co.
File No. 9-1013-2-2

RECEIVED

NOV 3 1917

3

FEDERAL TRADE COMMISSION.
WASHINGTON.

Sch 5 85

Ex in D 453

Andalusia Pkg. Co.

FOOD INVESTIGATION.

SPECIAL REPORT.

SLAUGHTERING AND MEAT PACKING.

SCHEDULE B.

STATISTICAL STATEMENT.

The information required by this report is ordered to be furnished pursuant to the power of the Commission under subdivision (b) of section 6 of the Federal Trade Commission Act.

This report must be mailed to the FEDERAL TRADE COMMISSION, WASHINGTON, D. C., on or before Nov. - 5, 1917.

PENALTIES.

Failure to mail this report within the time required will subject the corporation to a forfeiture of the sum of $100 for each and every day of the continuance of such failure. (Section 10, Federal Trade Commission Act.)

Any person who shall wilfully make or cause to be made any false entry or statement of fact in this report shall be subject to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years or to both such fine and imprisonment. (Section 10, Federal Trade Commission Act.)

VERIFICATION.

The accuracy of any statement made in this report will be verified by the Commission in its discretion.

201-1

Ident.
Ex A-23
Witness Henderson
March 11, 1921
R.M.

Federal Trade Commission

Com's		Resp's	X	Ex. No.	32
Comp's		Pret's			
Deft's		Intv's			

Docket No. 453 (Date) July 25 1921
Witness F. L. Horton
Reporter F. H. McBride

1465

RECEIVED

2-3-4-5-6-7-8-9-10

SLAUGHTERING AND MEAT PACKING.—SPECIAL REPORT.

NOTE.—The word "company," wherever used in this schedule, means corporation, partnership, or individual, as the case may be.

(If additional sheets are necessary to furnish the information required by any of the following questions, they should be given the number of the question to which they apply and attached to this report.)

1. Name of company Andalusia Alabama

2. Form of business organization (corporation, partnership, individual) Corporation

3. Principal business office Andalusia Ala

4. List all slaughtering plants operated by this company, or by any of its subsidiary or affiliated companies, with location, hourly slaughtering capacity, and, if leased, name and address of owner:

Name and location of plant.	Slaughtering capacity per hour.				If leased, name and address of owner.
	Cattle.	Calves.	Hogs.	Sheep.	
Andalusia Pkg Co	5	—	45	—	

201-2

1467

Name of company Andalusia Packing Co

Address Andalusia Ala

6. Attach a statement to this report showing separately for each slaughtering plant operated by this company, or by any of its subsidiary or affiliated companies, the following statistics for the past five calendar years and for the first six months of 1917. (Give actual total numbers, quantities, and amounts, *not* average or per head figures.) If more than one plant is operated enter data for additional plants on separate sheets and attach.

LOCATION OF PLANT Andalusia Ala

ITEM.	CALENDAR YEAR. 1912.	1913.	1914.	1915.	Started Oct. between June 9 1916	Jan. 1 to June 30, 1917.
Dressed beef cattle:						
Number slaughtered					21	579
Total live weight					14165	432198
Total live cost					676.92	28666.61
Total dressed weight					6426.	1895.23
Pounds of carcass beef sold					3313.	180875.
Gross receipts from carcass beef[1]					280.42	22023.53
Other cattle:						
Number slaughtered						
Total live weight						
Total live cost						
Total dressed weight						
Calves:						
Number slaughtered						
Total live weight						
Total live cost						
Total dressed weight						
Pounds of veal sold						
Gross receipts from veal[1]						
Hogs:						
Number slaughtered					31439	26438
Total live weight					4715906	4102319
Total live cost					397523.87	402758.26
Total dressed weight					3065341	2914692
Sheep and lambs:						
Number slaughtered						
Total live weight						
Total live cost						
Total dressed weight						

Statement of gross receipts should not include discounts to customers.

FEDERAL TRADE COMMISSION

4 A.

Docket No. 453 Exhibit No. 184

Commission's Date June 3/21

Defendant's

Witness Colt Reporter Bray

201-4

Name of company Andalusia Packing Co

Address Andalusia Ala

7. Quantity of lard, oleomargarine, butterine, lard compounds, and lard substitutes produced at each plant operated by this company, or by any of its subsidiary or affiliated companies, quantity sold, and gross receipts from sale for past five calendar years and for first six months of 1917. If more than one plant is operated enter data for additional plants on separate sheets and attach.

Location of Plant Andalusia Ala

Item.	Calendar Year. 1912.	1913.	1914.	1915.	Started operating June 9th 1916.	Jan. 1 to June 30, 1917. May 6th
Lard:						
Pounds produced					383774	564293
Pounds sold					219507	514973
Gross receipts from sale [1]					34560.27	87737.09
Oleomargarine:						
Pounds produced						
Pounds sold						
Gross receipts from sale [1]						
Butterine:						
Pounds produced						
Pounds sold						
Gross receipts from sale [1]						
Lard compounds and lard substitutes:						
Pounds produced						
Pounds sold						
Gross receipts from sale [1]						

Card 77 Ver 1915

FEDERAL TRADE COMMISSION
Vs.
Docket No. 453 Exhibit No. 185
Commission's Date June 7/1920
Defendant's
Witness Colt Reporter Bruce

[1] Statement of gross receipts should not include discounts to customers.

5

201-5

1471

3

Name of company Andalusia Packing Co.

Address Andalusia Ala.

10. Give the total number of pounds of the commodities named in the headings below on hand on the dates indicated. Figures must include stocks of this company and of all subsidiary and affiliated companies.

Date.	Frozen beef.	Smoked hams and bacon.	Dry salt pork.	Pickled pork.	Lard.	Lard compounds and substitutes.	Hides.
1916.							
January 31	No record made of stock on hand						
February 29							
March 31							
April 30							
May 31							
June 30							
July 31							
August 31							
September 30							
October 31							
November 30							
December 31	None	13901	888189	336692	164267	None	None
1917.							
January 31			No Record				
February 28							
March 31							
April 30	None	18758	222020	204289	30911	None	47042
May 31			No record				
June 30							
July 31							

FEDERAL TRADE COMMISSION
vs.

Docket No. 453 Exhibit No. 197
Commission's Date June 4, 1918
Defendant's
Witness Colt Reporter Mady

201 - 7

3

Name of company Andalusia Pkg Co

Address Andalusia Ala

19. If this company, or any of its subsidiary or affiliated companies, depends on others for refrigerator cars, state fully how such cars are furnished, by whom and on what terms. If you have any difficulty in securing cars or if, in your judgment, terms and conditions or any practices are unreasonable, state the facts fully. (Use separate sheet of paper and attach.)

20. If you, or any of your subsidiary or affiliated companies, operate private cars but do not operate icing stations, state fully under what conditions and upon what terms icing is done for you and by whom. If in your judgment terms and conditions or any practices are unreasonable, state the facts fully. (Use separate sheet of paper and attach.)

21. If this company, or any of its subsidiary or affiliated companies, sells any of its products through its own branch houses or through subsidiary or affiliated companies or branch houses of the same, attach a list of all such branch houses, giving separately for each the following information: (a) Name and location; (b) total pounds of fresh meat sold during past fiscal year, also total pounds of (c) cured meat, (d) poultry, (e) butter, (f) cheese, and (g) total dozens eggs sold during same period at each such branch house. Also attach a list of all other products sold through branch houses. none see attached

22. If any manufacturing or packing (such as smoking meats, slicing and packing meats, etc.) is done in any of the branch houses listed under Question 21 or in connection with any of them, state the nature and extent of such manufacturing or packing as to each branch house where it is carried on. (Use separate sheet and attach.)

23. If this company does not sell its products through branch houses, or sells only in part through branch houses, state fully the method of selling its various products, as through brokers, to wholesalers, etc. (Use separate sheet and attach.)

This report and all attached statements made and signed this 5th day of October 1917.

Andalusia Packing Co By O B Colt Treasurer

(Name of corporation.) (Name and position of person signing; to be signed in person.)

201-10

2442 Question 19:
We depend on Swift & Company Refrigerator Transportation Company and the Railroads for cars for which there is no charges. We have no difficulty in securing cars and have no complaint to make.
2443 Question 20:
None.
2444 Question 21:
No branches.
2445 Question 22:
No branches.
2446 Question 23:
Sell products by own salesman to wholesalers and retailers and also sell various products through brokers.

2447 Andalusia Packing Company
Packers
Andalusia, Alabama.
Phone 96 Oct. 23,
1917.

Hon. L. L. Brackin,
Sec'y Federal Trade Commission,
Washington, D. C.
Dear Sir:
Replying to your favor of October 18th:
Wish to advise that we mailed you on October 6th in the envelope furnished us by you Schedule B. If up to date you have not received same, please send us another blank and we will fill in figures as originally reported.

Yours respectfully,
ANDALUSIA PACKING COMPANY.
Per CBC

Acctg. Dept.
CBC:PW

2448 October 27, 1917.

Andalusia Packing Company
Andalusia, Alabama.
Gentlemen:
The Commission is in receipt of your letter of October 23rd and notes you advise that Schedule "B", Slaughtering and Meat Packing, was mailed October 6th, but the Commission has not received the same to date. Enclosed find duplicate schedule.

The Commission requires that you give the data asked for on each page of Schedule "B" or answer all questions on each page, stating such data is not available and give sufficient reasons. Mail the same in on or before November 5th, 1917.

Enclosed find franked envelope for your reply.

Yours very truly,

FEDERAL TRADE COMMISSION

By

Secretary

TJH-B
Encls.

October 27, 1917.

Andalusia Packing Company
Andalusia, Alabama.

Gentlemen:

The Commission is in receipt of your letter of October 23rd and notes you advise that Schedule "B", Slaughtering and Meat Packing, was mailed October 6th, but the Commission has not received the same to date. Enclosed find duplicate schedule.

The Commission requires that you give the data asked for on each page of Schedule "B" or answer all questions on each page, stating such data is not available and give sufficient reasons. Mail the same in on or before November 5th, 1917.

Enclosed find franked envelope for your reply.

Yours very truly,

FEDERAL TRADE COMMISSION

By

Secretary

TJH-B
Encls.

ion's
it No.

2449

Swift & Company
Union Stock Yards
Chicago, Illinois

Docket No. 453
Exhibit No. 186
Date June 3, '21
Witness Chaplin

—Statement of investment entries in connection with the acquisition of Moultrie Packing Company capital stock.

—Cash binders destroyed when the Company's time limit for maintaining such records had been reached.
—Transactions reflected on Swift & Company's books as follows:

June 29th, 1917				
Cash Entry Purchased	928 shares	@ $125 per share		$116,000.00
Aug. 16th, 1917				
Cash Entry Purchased	20 "	@ $125 "	"	$ 2,500.00
Nov. 14th, 1917				
Cash Entry Purchased	8 "	@ $125 "	"	$ 1,000.00
Nov. 5th, 1917				
Journal Entry Contracted	10 "	@ $125 "	"	$ 1,250.00*
Grand Total Investment Record Entries covering the above	966 shares			$120,750.00

*Purchased Feb. 5th, 1918.

Certified Correct:

.....

General Accountant for Swift & Company.

2450

Docket No.
Exhibit No. 187
Date June 3, 1921
Witness Chaplin

Commission Exhibit 187.

The State of Alabama, Covington County.

Know All Men By These Presents, That for and in consideration of One Dollar and other valuable considerations to the undersigned grantor, Andalusia Packing Company, a corporation organized and existing under the laws of the State of Alabama, in hand paid by Swift and Company, a corporation organized and existing under the laws of the State of Illinois, the receipt whereof is hereby acknowledged, said Andalusia Packing Company does grant, bargain, sell and convey unto the said Swift and Company the following described real estate, to-wit:

First: All that part of the West half (½) of the Northwest quarter (¼) of Section Eighteen (18) Township four (4), Range sixteen (16), lying on the North and East side of the right of way of the Louisville & Nashville Railway, being the same premises conveyed by deed dated November 15th, 1916, by W. C. W. Cawthon and wife to said Andalusia Packing Company, recorded November 16th, 1916, in Book 48 of Deeds, page 356, in the office of the Judge of Probate of Covington County, State of Alabama;

Second: All that portion and part of the West half (½) of the Southeast quarter (¼) of the Northwest quarter (¼) of said Section eighteen (18), lying East of the right of way of the Alabama & Florida Railroad (now Louisville & Nashville Railway), being the same premises conveyed by deed dated October 11th, 1915, from Della McCall et al to said Andalusia Packing Company, recorded October 11th, 1915, in Book 45 of Deeds, page 21, in the office of Judge of Probate of
2451 said Covington County;

Third: A lot or parcel of land situated in the City of Andalusia, bounded and described as follows:

Beginning at Southwest corner of the Weaver lot on the North side of River Falls Street, and running North parallel with the West side of said Weaver lot one hundred (100) yards; thence West thirty-five (35) yards; thence South one hundred (100) yards to River Falls Street; thence East along the North side of said street to point of beginning, a distance of thirty-five (35) yards; being the same premises conveyed by deed dated October 11th, 1915, from Della McCall to said Andalusia Packing Company, recorded October 11th, 1915, in Book 46 of Deeds, page 90, in the office of Judge of Probate of said Covington County;

Fourth: A lot or parcel of land situated in the City of Andalusia, bounded and described as follows:

Beginning at a point on the North side of River Falls Street thirty-five (35) yards of the Southwest corner of the Weaver residence lot, and running thence North one hundred (100) yards; thence running West sixty (60) yards to right of way of Alabama & Florida Railroad (now Louisville & Nashville Railway); thence South along the East side of said right of way to River Falls Street, and thence East along River Falls Street to point of beginning, being the same premises conveyed by deed dated October 11th, 1915, from Tula McCall to said Andalusia Packing Company, recorded October 11th, 1915, in Book 46 of Deeds, page 93, in the office of Judge of Probate of said Covington County;
all of said real estate situated, lying and being in the County of Covington, State of Alabama.

To Have And To Hold to the said Swift and Company, its successors and assigns, forever, and said Andalusia Packing Company, for itself and its successors covenants with
2452 said Swift and Compny, its successors and assigns, that it is lawfully seized in fee simple of said premises; that they are free from all encumbrances and that it has good right to sell and convey the same as aforesaid and that it will and

its successors shall warrant and defend the same to said Swift and Company, its successors and assigns forever, against the lawful claims of all persons.

In Witness Whereof, said Andalusia Packing Company has caused these presents to be signed by its President and its corporate seal to be hereunto affixed, attested by its Secretary this 30th day of March, A. D. 1918.

ANDALUSIA PACKING COMPANY,
By T. H. INGWERSEN,
President.

(Seal)
Attest:
C. A. PEACOCK,
Secretary.
Signed, sealed and delivered
in the presence of:
ERIC L. ANDERSON

2453 State of Illinois, } ss.
County of Cook. }

I, Arthur Corbishley, a Notary Public in and for said County in said State, hereby certify that T. H. Ingwersen, whose name as President of Andalusia Packing Company, a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and notarial seal this 30th day of March A. D. 1918.

ARTHUR CORBISHLEY,
Notary Public.
(Notarial Seal) My Commission expires Oct. 7, 1920.

The State of Alabama, Covington County,
Office of Judge of Probate.

I hereby certify that the within Deed was filed in this Office for record on the 17 day of June, 1918, at 2 o'clock P. M., and duly recorded in Book 45 of Deeds, page 492-493, and examined.

J. M. ROBINSON,
Judge of Probate.

FEF-L

2454

Docket No. 453
Exhibit No. 188
Date June 3, 1921
Witness Chaplin

Know All Men By These Presents, That Andalusia Packing Company, a corporation organized and existing under the laws of the State of Alabama, hereinafter designated as the party of the first part, for and in consideration of the sum of One Thousand Dollars ($1,000.00) and other good and valuable considerations to it in hand paid, the receipt of which is hereby acknowledged, has granted, bargained, sold and delivered, and by these presents does hereby grant, bargain, sell and deliver unto Swift and Company, a corporation duly organized and existing under the laws of the State of Illinois, hereinafter designated as the party of the second part, all the following property, goods and chattels, towit:

The business now conducted by the said party of the first part, wherever situated and in whatever it may consist, and also the following property, goods and chattels used in the conduct of said business or appurtenant thereto, towit:

All machinery, appliances, equipment, tools, utensils, fixtures, furniture, horses, wagons, harness and automobiles; all merchandise manufactured or in process of being manufactured, raw material and supplies; all cash on hand or in bank; all bills and accounts receivable, and generally, any and all personal or movable property of every description wherever situated, whether included in the aforesaid enumeration or not; subject, however, to the payment by said party of the second part of all bills and accounts payable and the assumption by the party of the second part of all obligations of the party of the first part of whatsoever nature in connection with said business and property.

To Have And To Hold all the above mentioned property hereby conveyed and assigned, or intended to be conveyed and assigned and each and every part and parcel thereof unto the said party of the second part, its successors and assigns, forever.

In Witness Whereof, the party of the first part has caused its presents to be signed by its President and its cor-

2455 porate seal to be hereunto affixed, attested by its Secretary this 30th day of March, A. D. 1918.

ANDALUSIA PACKING COMPANY,
By T. H. INGWERSEN,
President.

(Seal)
Attest:
C. A. PEACOCK,
Secretary.
Signed, sealed and delivered in the presence of:
ERIC L. ANDERSON.

2456 State of Illinois, }
County of Cook. } ss.

I, Arthur Corbishley, a Notary Public in and for said County in said State, hereby certify that T. H. Ingwersen, whose name as President of Andalusia Packing Company, a corporation, is signed to the foregoing conveyance and who is known to me acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and notarial seal this 30th day of March, A. D. 1918.

ARTHUR CORBISHLEY,
Notary Public.

(Seal)
REF-L
O

My commission expires Oct. 7, 1920.

2457

Docket No. 453
Exhibit No. 189
Date June 3, 1921
Witness Chaplin

Commission Exhibit 189.

State of Georgia,
Colquitt County

This Indenture, Made and entered into the 24th day of November, in the year Nineteen Hundred and Seventeen between Moultrie Packing Company, a corporation organized under the laws of the State of Georgia, of the first part, and Swift and Company, a corporation organized under the laws of the State of Illinois, of the second part, Witnesseth:

That the said party of the first part for and in considera-

tion of the sum of One Dollar ($1.00) and other valuable considerations in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed unto the said Swift and Company, party of the second part, its successors and assigns, all that tract or parcel of land situate, lying and being in the County of Colquitt, State of Georgia, and described as follows:

Thirteen and nineteen one-hundredths (13.19) acres of land, being part lot Number Nineteen (19) by the Arthur Survey, of original lot Number Two Hundred and Forty-five (245) in the Eighth (8th) Land District of Colquitt County, Georgia, described as follows: Beginning at the intersection of the north margin of the right of way of the Georgia
2458 Northern Ry. Co. with the west margin of the Moultrie & Sumner Public Road on said lot, running thence in a northern direction along the west margin of said road twelve hundred and forty-five and seven tenths (1245.7) feet; thence in a westerly direction at an angle of 95° and 1′ from said road three hundred and forty-five and five tenths (345.5) feet to right of way of Georgia Northern Ry. Co., thence in the same direction, beginning on the opposite side of said right of way, two hundred and sixty-six and five tenths (266.5) feet to original west line of said lot No. 245, to a pine tree, thence south at an angle of 95° 15′ with last line described above nine hundred and eighty-two and five tenths (982.5) feet to a stake; thence east five hundred and two (502) feet to said right of way of Georgia Northern Ry. Co., then begin again on the east or north side of said right of way in a line with the last above described line; thence running southeasterly along the east or north margin of said right of way to point of beginning—The Georgia Northern Ry. Co.'s right of way running through this tract not being included. Being all of Sub-D. lot No. 19, by Arthur Survey of said original lot west of Moultrie & Sumner Public Road, formerly owned by R. E. Champion.

This being the same premises which was conveyed to the grantor herein by R. E. Champion, under deed dated 11th day of April, 1914, and recorded in Deed Records said county on 27th day of April, 1914, in Book J J, page 125.

Also, a perpetual right of way for a ditch or sewer from the above described land to the 'Pilco Creek across lands now or formerly owned by R. E. Champion, lying between said above described land and said Creek and being on said Lot 245, it being understood that beginning at the Moultrie & Sumner Public Road a sewer will be placed for at least two

hundred (200) yards on the east side of said Road and for that distance the ditch shall not be left open and that the ditch or sewer shall not empty or be discontinued nearer than forty (40) yards east of the present slaughter house of said R. E. Champion.

Which said tract or parcel of land and right of way said party of the first part will well and truly warrant and defend from the claim of all persons whomsoever unto the said party of the second part, its successors and assigns, forever, in fee simple.

2459 In Witness Whereof, Moultrie Packing Company has caused this instrument to be executed by its President and its corporate seal to be hereto affixed, and attested by its Assistant Secretary, the day and year first above written.

MOULTRIE PACKING COMPANY
By T. H. INGWERSEN,
President.

(Seal)

Recorded in the office of Clerk of the Superior Court, Colquitt County, Georgia, December 7, 1917, in Book "RR" Folio 1723.

C. A. PEACOCK,
Assistant Secretary.
Signed, sealed and delivered in Presence of:
W. H. SOUTTER
E. C. PHILLIPS
Notary Public, Cook County, Ill.
(Seal)
REF:EL

} Attest:

2460 Stamped): Docket No. 453, Exhibit No. 190 Date June 3, 1921 Witness: Chaplin Reporter: Brady. Commission's Exhibit 190.

Know All Men By These Presents, That Moultrie Packing Company, a corporation duly organized and existing under and by virtue of the laws of the State of Georgia, hereinafter designated as the party of the first part, for and in consideration of the sum of One Thousand Dollars ($1,000.00) and other good and valuable consideration to it in hand paid, the receipt of which is hereby acknowledged, has granted, bargained, sold and delivered, and by these presents does

hereby grant, bargain, sell and deliver unto Swift and Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, hereinafter designated as the party of the second part, all the following property, goods and chattels, to-wit:

The entire business now conducted by the said party of the first part wherever situated in the State of Georgia and elsewhere, and in whatever it may consist, and also the following property, goods and chattels used in the conduct of said business or appurtenant thereto, to-wit:

All machinery, appliances, equipments, tools, utensils, fixtures, furniture, horses, wagons, harness and automobiles, all merchandise manufactured or in process of being manufactured raw material and supplies, all cash on hand or in bank, all bills and accounts receivable, and, generally, any and all personal or movable property of every description, wherever situated, whether included in the aforesaid enumeration or not; subject, however, to the payment by said party of the second part of all bills and accounts payable, and the assumption by the party of the second part of all obligations of the party of the first part, of whatsoever nature, in connection with said business and property.

To Have And To Hold all the above mentioned property hereby conveyed and assigned, or intended to be conveyed and assigned, and each and every part and parcel thereof, unto the said party of the second part, its successors and assigns, forever.

In Witness Whereof, the party of the first part has caused these presents to be assigned by its President and its corporate seal to be hereunto affixed and to be attested by its Assistant Secretary this 3d day of November, A. D. 1917.

MOULTRIE PACKING COMPANY,
By T. H. INGWERSEN,
President.

(Seal)
Attest:
C. A. PEACOCK,
Assistant Secretary.

Signed, Sealed and Delivered
In the Presence of:
W. H. SOUTER
E. C. PHILLIP, *Notary Public, Cook County, Illinois.*

mw/na b (Seal

2461 Law Offices
Albert H. & Henry Veeder
76 West Monroe Street,
Chicago.

Comm'l Exhibit 191.

October 9, 1917.

Francis E. Baldwin.
Mr. R. C. McManus,
c/o Swift and Company,
Chicago.

Dear Sir:

Andalusia Packing Company, Andalusia, Alabama.

File 115.

Answering yours of the 5th instant, the total number of shares outstanding and purchased was 2665 for which $70.00 per share was paid, the par value of the stock was $50. per share. The corporation owed more than $200,000. which Swift and Company assumed and agreed to pay.

Sincerely yours,
(Sgd) ALBERT H. & HENRY VEEDER,
Ref.

(Stamp) Docket No. 453
Exhibit No. 191
Date June 4, 1921
Reporter Brady

(Stamped):
Arthur Corbishley.

2462 For exhibit 192 see—after exhibit 185 (part of Schedule B).

n's No. 2463

MOUTRIE PACKING COMPANY

ASSETS

Cash	.....	$ 24,425.63
Inventory	.....	243,789.18
Accounts Receivable	.....	37,279.94
Deferred Expenses	.....	3,560.63
Land	.....	1,648.75
Buildings	.....	105,546.38
Machinery	.....	38,562.55
Equipment	.....	3,618.54
Autos	.....	420.43
Furniture	.....	2,073.75
Well	.....	2,285.40
Sewer	.....	175.00
Sundry Debit & Credit	.....	146,267.59
Construction	.....	5,047.50
TOTAL		614,701.27
Less Accounts Payable and Accrued Expenses		436,186.18
Net Purchase Amount		$178,515.09

Nov. 3rd, 1917.
(Stamped):
Docket No. 453
Exhibit No. 193
Date June 6, 1921
Witness: Chaplin
Reporter: Brady.

2464 VALUES TRANSFERRED ON BILL OF SALE
3/30/1918 ANDALUSIA, ALABAMA.

Comm... Exhi... 194.

	ASSETS		
Cash		$ 16,782.56	
Inventory		504,464.90	
Accounts Receivable		24,477.02	
Deferred Exp.		4,757.96	
H.W. & H.		2,000.00	
O. F. & F.		2,781.77	
Land	2,650.00		
Bldg.	108,453.31		
Equip.	82,096.31		
	193,199.62		
Less Depn.	3,120.00	190,079.62	
Construction		1,418.90	$746,762.73
	LIABILITIES		
Accounts & Bills Payable		498,968.74	
Accrued Charges		267.85	499,236.59
Net Purchase Price			$247,526.14

(Stamped):
Docket No. 453
Exhibit No. 194
Date June 6, 1921.
Witness: Chaplin
Reporter: Brady.

Prov. Dept. Moultrie

MOULTRIE WEEKLY DIFFERENTIAL LETTER No. 25

Cancelling All Previous Differentials

Basis S. & W. Branch House List F. O. B. Kansas City. Product not mentioned below will be invoiced S. & W. List F. O. B. Kansas City, except D. S. and Bacon Meats Daily Wired Market and Basis Circular Differentials.

Fresh and Frozen Pork Cuts

Pork Loins, Fresh or Frozen 8-10 lbs. avg.	½c under
Pork Loins, Fresh or Frozen 10-12 lbs. avg.	½c under
Boston Butts, Frozen	½c under
Skinned Shoulders, Fresh or Frozen	1c under
Fresh Extra Lean Pork Trimmings	7½c F.O.B.Kas.City
Frozen Extra Lean Pork Trimmings	7½c F.O.B.Kas.City

Pigs

Fresh and Frozen 30-50	13c	F.O.B.Kansas City
Fresh and Frozen 50-60	13c	F.O.B.Kansas City
Fresh and Frozen 60-75	13c	F.O.B.Kansas City
Fresh and Frozen 75-85	11½c	F.O.B.Kansas City
Fresh and Frozen 85-100	11½c	F.O.B.Kansas City
Fresh Hogs, 100-120	11c	F.O.B.Kansas City

Above are for shipper dressed.

Fancy Meats

Frozen Pork Brains	2c under
Fresh and frozen Pork Tongues 25-lb. boxes	2c under
Fresh Pork Melts	½c under
Frozen Pork Chitterlings	1c under

S. P. and Smoked Meats

Dixie Regular Hams, 8-10	1c over Empire
Dixie Regular Hams, 10-12	1c over Empire
Dixie Regular Hams, 12-14	1c over Empire
Dixie Skinned Hams, 12-14	Out
Dixie Skinned Hams, 14-16	1c over Empire
Dixie Bellies, 4- 6	1c over Empire
Seminole Picnics, 8-10	Same as Empire
Seminole Strips, 3-4	3c under Empire
Seminole Strips, 4-5	2c under Empire
Seminole Strips, 5-6	2c under Empire
Seminole Bacon Strips	½c over Sem. Wide Bacon
Seminole Bellies, 6-8	3c under Empire
Seminole Bellies, 8-10	2c under Empire
Seminole Bellies, 10-12	2c under Empire
Seminole Picnics, 8-10 Rolled and Tied	Same as Empire
Seminole Skd.Picnics, 8-10 Rolled and Tied	Same as Empire
Dixie Regular Hams, R. B. & T. to houses only that cook	1c over Empire 912
Dixie Skinned Hams, R. B. & T. to houses only that cook	1c over Empire 913
Seminole Regular Hams, R. B. & T. to houses only that cook	1c under Empire 912
Seminole Skinned Hams, R. B. & T. to houses only that cook	same as Empire Skd. 913
Boneless Butts, S. P.	out
Cottage Roll, smoked	out
Boston Butts, S. P.	16½
Boston Butts, Smoked	21½

Vinegar Pickled Pork Tongues C. & S.

One-eighth Barrels 25 lbs. net	3.20 each

F. O. B. Kansas City

Lard

Seminole Brand Pure Lard, 30-lb., 60-lb., 80-lb. tubs, tierces, 50-lb. net cans, 6-10 lb. cases, 12-5 lb. cases, 1½c under Silverleaf.

Dixie Bellies, 6-10	Out
Seminole Regular Hams, 6-8	1c under Empire
Seminole Regular Hams, 8-10	1c under Empire
Seminole Regular Hams, 10-12	1½c under Empire
Seminole Regular Hams, 12-14	1½c under Empire
Seminole Skinned Hams, 12-16	½c under Empire
Seminole Skinned Hams, 16-18	Same as Empire
Seminole Skinned Hams, 18-20	Same as Empire
Seminole Picnics, 3-6	Same as Empire
Seminole Picnics, 6-8	Same as Empire

Beef Tongues

Short Cut Beef Tongues, Fresh, 21c; S. P. 22½c; Smoked 28c ..... F.O.B. Kansas City

Long Cut Beef Tongues, Fresh, 19c ..... F.O.B. Kansas City

Cooked Hams

Dixie Brand Hams, Regular or Skinnd ..... 1c under Premiume

D. S. and Bacon Meats Shipped on Consignment

Basis Chicago wired market basis circuar differentials.

D. S. and Bacon Rib Bellies, 14-16 lb ..... 2c under

All other D. S. and Bacon Meats ..... 1c under

All standard product from hard hogs will be invoiced in full at S. & W. List F. O. B. Kansas City.

Quotations are for goods packed and F. O. B. cars Kansas City.

Cartage will be charged for any goods shipped by local freight. Our responsibility ceases after goods are receipted for in good order by transportation company, and we will not guarantee condition of shipments at arrival at destination.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.

All prices are quoted subject to market changes, and subject to our having the product in stock.

We do not guarantee to ship product as ordered unless specific arrangements have been made.

Branch House Provision Department

Chicago, June 20, 1921

FEDERAL TRADE COMMISSION
vs.
SWIFT & CO.

Docket 453
Witness Davis July 18, 1921
Reporter McKey.
Com. Ex. No. 195.

MOULTRIE WEEKLY DIFFERENTIAL LETTER No. 28

Cancelling all Previous Differentials

Basis S. & W. Branch House List F. O. B. Kansas City. Product not mentioned below will be invoiced S. & W. List F. O. B. Kansas City, except D. S. and Bacon Meats Daily Wired Market and Basis Circular Differentials.

Fresh and Frozen Pork Cuts
- Pork Loins, Fresh or Frozen 8-10 lbs. avg. ..... 1½c under
- Pork Loins, Fresh or Frozen 10-12 lbs. avg. ..... 1c under
- Boston Butts, Frozen ..... ¼c under
- Skinned Shoulders, Fresh or Frozen ..... 1½c under
- Fresh Extra Lean Pork Trimmings .... 6½c F.O.B. Kas. City
- Frozen Extra Lean Pork Trimmings ... 6½c F.O.B. Kas. City

Pigs
- Fresh and Frozen 30-50 ..... 14c F.O.B. Kansas City
- Fresh and Frozen 50-60 ..... 14c F.O.B. Kansas City
- Fresh and Frozen 60-75 ..... 14c F.O.B. Kansas City
- Fresh and Frozen 75-85 ..... 12½c F.O.B. Kansas City
- Fresh and Frozen 85-100 ..... 12½c F.O.B. Kansas City
- Fresh Hogs, 100-120 ..... 11c F.O.B. Kansas City

Above are for shipper dressed.

Fancy Meats
- Frozen Pork Brains ..... 2c under
- Fresh and frozen Pork Tongues 25-lb. boxes 2c under
- Fresh Pork Melts ..... 1½c under
- Frozen Pork Chitterlings ..... 1c under
- Frozen Pork Snouts ..... 1c under

S. P. and Smoked Meats
- Dixie Regular Hams, 8-10 ..... 1c over Empire
- Dixie Regular Hams, 10-12 ..... 1c over Empire
- Dixie Regular Hams, 12-14 ..... 1c over Empire
- Dixie Skinned Hams, 12-14 ..... Out
- Dixie Skinned Hams, 14-16 ..... 1c over Empire
- Dixie Bellies, 4-6 ..... 1c over Empire
- Seminole Picnics, 8-10 ..... Same as Empire
- Seminole Strips, 3-4 ..... 3c under Empire
- Seminole Strips, 4-5 ..... 2c under Empire
- Seminole Strips, 5-6 ..... 2c under Empire
- Seminole Bacon Strips ..... ¼c over Sem. Wide Bacon
- Seminole Bellies, 6-8 ..... 3c under Empire
- Seminole Bellies, 8-10 ..... 2c under Empire
- Seminole Bellies, 10-12 ..... 2c under Empire
- Seminole Picnics, 8-10 Rolled and Tied ..... Same as Empire
- Seminole Skd. Picnics, 8-10 Rolled and Tied. Same as Empire
- Dixie Regular Hams, R. B. & T. to houses only that cook ..... 1c over Empire 912
- Dixie Skinned Hams, R. B. & T. to houses only that cook ..... 1c over Empire 913
- Seminole Regular Hams, R. B. & T. to houses only that cook ..... 1c under Empire 912
- Seminole Skinned Hams, R. B. & T. to houses only that cook ..... same as Empire Skd. 913
- Boneless Butts, S. P. ..... out
- Cottage Roll, smoked ..... out
- Boston Butts, S. P 15
- Boston Butts, Smoked 20

Vinegar Pickled Pork Tongues C. & S.
- One-eighth Barrels 25 lbs. net ..... 3.20 each
- F. O. B. Kansas City

Lard
- Seminole Brand Pure Lard, 30-lb., 60-lb., 80-lb. tubs, tierces, 50-lb. net cans, 6-10 lb. cases, 12-5 lb. cases, 1½c under Silverleaf.

Dixie Bellies, 6-10	Out
Seminole Regular Hams, 6-8	1c under Empire
Seminole Regular Hams, 8-10	1c under Empire
Seminole Regular Hams, 10-12	1½c under Empire
Seminole Regular Hams, 12-14	1½c under Empire
Seminole Skinned Hams, 12-16	¾c under Empire
Seminole Skinned Hams, 16-18	Same as Empire
Seminole Skinned Hams, 18-20	Same as Empire
Seminole Picnics, 3-6	Same as Empire
Seminole Picnics, 6-8	Same as Empire

Beef Tongues

Short Cut Beef Tongues, Fresh, 21c; S. P. 22½c; Smoked 28c ..... F.O.B. Kansas City

Long Cut Beef Tongues, Fresh 19c; ..... F.O.B. Kansas City

Cooked Hams

Dixie Brand Hams, Regular or Skinned. . . 1c under Premium

D. S. and Bacon Meats Shipped on Consignment

Basis Chicago wired market basis circular differentials,

D. S. and Bacon Rib Bellies, 14-16 lb. ..... 2c under

All other D. S. and Bacon Meats. ..... 1c under

All standard product fron hard hogs will be invoiced in full at S. & W. List F. O. B. Kansas City.

Quotations are for Goods packed and F. O. B. cars Kansas City.

Cartage will be charged for any goods shipped by local freight. Our responsibility ceases after goods are receipted for in good order by transportation company, and we will not guarantee condition of shipments at arrival at destination.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.

All prices are quoted subject to market changes, and subject to our having the product in stock.

We do not guarantee to ship product as ordered unless specific arrangements have been made.

Branch House Provision Department

Chicago July 11, 1921

FEDERAL TRADE COMMISSION

vs.

SWIFT & CO.

Docket 453

Witness Davis July 18, 1921

Reporter McKey

Com. Ex. No. 196

FEDERAL TRADE COMMISSION
vs
SWIFT & CO. No. 269 Y

July 18, 1921 Docket 453
Witness Reporter
Davis MacRae

Southern and Western
BRANCH HOUSE PRICE LIST Y
Issued by Swift & Company U. S. A.
June 20, 1921

LARD AND SHORTENING

Pure Lard {F. O. B. Kansas City, Omaha, or St. Paul plants.

	Tierces Per lb.
Premium Pure Lard, kettle rendered	12¼
"Silverleaf" Brand Pure Lard	11¼
Bakers' Special Lard (tierces only)	11¼
Jewel Shortening	9¼
Bakers' Shortening (tierces only)	9¼
Cotosuet	9¼

NOTE—Premium Pure Lard or Cotosuet not put up in Butter Tubs.

Prices shown Jewel Shortening, Bakers' Shortening and Cotosuet are Cafe to all branch houses east of Rocky mountains.

When quoting Lard or Cotosuet we state price for tierces containing about 340 lbs. net. The advances for wooden packages are as follows:

	Per lb. over tierces
Drums, 60 and 65 lbs. net	¼
Drums, 110 and 115 lbs. net	⅜
Half-barrels, about 100 lbs.	½
Butter Tubs, 10 lbs	2
Hardwood Tubs, iron bound, 65 lbs	¼

DRIED BEEF

Premium Dried Beef	1	Ham Sets	41½
	2	Outsides	25
	3	Insides	46
	4	KNUCKLES	40
			Reg. Dry
Empire Dried Beef	5	Ham Sets	40½
	6	Outsides	24
	7	Insides	45
	8	KNUCKLES	39
			Per doz.
Premium Wafer Sliced Dried Beef	9	No. ½, glass jars, 2 doz. in case	$ 2 75
	10	No. 1, glass jars, 1 doz. in case	5 15
Empire Sliced Dried Beef	11	No. ½, glass jars, 2 doz. in case	2 00
	12	No. 1, glass jars, 1 doz. in case	3 25

Delico Sliced Dried Beef

13 Small glass jars, 2 doz. in case, per doz. 1 45

BEEF TONGUES, SMOKED

Premium Beef Tongues	1	Long Cut, 3 to 4 lbs	33
	2	Long Cut, 4 to 5 lbs	35
	3	Long Cut, 5 lbs. up	38½
	4	Short Cut, 2 to 3 lbs	35½
	5	Short Cut, 3 to 4 lbs	39
	6	Short Cut, 4 to 5 lbs	43
Empire Beef Tongues	7	Long Cut, 3 to 4 lbs	31
	8	Long Cut, 4 to 5 lbs	33
	9	Long Cut, 5 lbs. up	36½
	10	Short Cut, 2 to 3 lbs	33½
	11	Short Cut, 3 to 4 lbs	37
	12	Short Cut, 4 to 5 lbs	41

Pickled, loose in slack barrels.....Flat list
Fresh or Frozen, loose on racks....Flat list
Frech or Frozen, loose in slack barrels..... ½c advance
Fresh or Frozen, loose in boxes....1 c advance

Commission's Exhibit No. 197.

Fancy Tubs, 20 lbs.		1
Fancy Tubs, 80 lbs.		¼
Wooden Pails, 20 lbs.		1
Wooden Pails, 10 lbs.		1
Cans, 45 lbs. and 50 lbs. net, 1 to case.		½
1-lb. Cartons	60 lbs. to case	1½
S. L. B. Pure Lard	30 lbs. to case	2

New Style—Net Weight Tin Pails for Pure Lard

30 2-lb. net, 60-lb. net cases.....3 c over tierce basis
12 5-lb. net, 60-lb. net cases.....2½c over tierce basis
6 10-lb. net, 60-lb. net cases.....2 c over tierce basis

New Style—New Weight Tin Pails for Jewel Shortening

24 2-lb. net, 48-lb. net cases.....3 c over tierce basis
12 4-lb. net, 48-lb. net cases.....2½c over tierce basis
6 8-lb. net, 48-lb. net cases.....2 c over tierce basis

Cooking Oils and Salad Oils Guaranteed Pure

	Per lb.
1 Golden Cottonseed Cooking Oil	8½
2 Peerless Cottonseed Cooking Oil	9
3 Gilt Edge Cottonseed Butter Oil	9

Sliced Dried Beef—Boxes

		Per lb.
14	Premium Wafer Sliced, 5 and 10 lb. wood boxes	57
15	Premium Wafer Sliced, cartons 10—½ lb. net boxes	55
16	Empire Sliced, 5 and 10 lbs. wood boxes	42
17	Empire Sliced, cartons 10—¼ lb. net boxes	40

Above packed in 6/5-lb. or 3/10-lb. boxes in case. Shipped from all plants.

18 Swift's Sliced Dried Beef, 5 lb. paper cartons, per lb. 38

Sliced Dried Beef in wood boxes and paper cartons is perishable and must be sold promptly.

We guarantee our dried beef in glass jars for ninety days from date of shipment from our plant.

			Pkld. Per lb.	Fresh or Frozen Per lb.
	1	x Beef, short cut, 3 lbs. and under 3½ lbs.	27	25½
	2	x Beef, short cut, 3½ lbs. and under 4 lbs.	28	26½
	3	x Beef, short cut, 4 lbs. and under 4½ lbs.	32	30½
	4	x Beef, short cut, 4½ lbs. and under 5 lbs.	33	31½
Tongues	5	x Beef, short cut, 5 lbs. and up	34	32½
	6	x Beef, long cut, 4 lbs. and under 5 lbs.	24	22½
	7	x Beef, long cut, 5 lbs. and under 5½ lbs.	25½	24
	8	x Beef, long cut, 5½ lbs. and under 6 lbs.	28	26½
	9	x Beef, long cut, 6 lbs. and up	29	27½

		Per lb.
4	Monogram Cottonseed Salad Oil	9½

Oil weighs 7½ lbs. per gallon. Barrels contain about 50 gallons each. Prices are for oils in barrels.

Advance for smaller packages,	Per lb.
Half-barrels	½
5 gallon cans, 2 to case	3
1 gallon cans, 10 to case	6
Half-gallon cans, 20 to case	8
Qt. cans, 24 to case, (Monogram Salad Oil only)	10
Pt. cans, 24 to case (Monogram Salad Oil only)	18

Write or wire for special prices on carload lots.
C. A. F. all Branch Houses east of Rocky Mountains.

Sanco Salad Oil

		Per case
1	24 Pints to the case	$ 5 75
2	24 Quart cans to the case	9 25
3	12 Half-gallon cans to the case	8 45
4	6 Gallon cans to the case	7 50

Above prices C. A. F. all branch houses east of the Rocky Mountains.

Animal Oils

Guaranteed Pure—Our Own Pressing		Per gal.
1	Extra winter Strained Lard	$ 79
2	Extra Lard	69
3	Extra No. 1 Lard	64
4	No. 1 Lard	59
5	No. 2 Lard	57
6	Pure Neatsfoot	69

Tripe

	Per lb.
Cooked Rolled, Frozen (3 whole pieces to box)	6
Cooked Frozen (2 whole pieces to box)	3
Cooked Regular (slack bbls.)	3
Frozen Cooked Beef Tripe (in 100 lb. forms)	2½
Prepared Pork Stomachs (slack bbls.)	3

Tripe in 50-lb. baskets ½c, 25-lb. baskets, ¼c higher.

DRY SALT AND BACON MEATS

Loose

500-lb. boxes	¼c adv	75-lb. boxes	1½c adv
300-lb. boxes	¼c adv	50-lb. boxes	1½c adv
200-lb. boxes	¼c adv	25-lb. boxes	1½c adv
100-lb. boxes	1 c adv	Sacked	½c adv

Muslin or white drill 2c advance, parchment 1½c advance. Oxford Bellies and Country Style Squares—wrapped in parchment no extra charge.

Calf and Lamb Tongues

		Pkld. Per lb.	Fresh or Frozen Per lb.
	1 x Calf, under 1 lb., per	11	10
	2 x Calf, 1 lb. to 1½ lb.	19½	18½
	3 x Calf, 1½ lb. and up	23	22
Tongues	1 x Lamb, skin on, untrimmed	5½	4
	2 x Lamb, skin off, untrimmed	6½	5

Premium Beef Tongues—Pickled

Prices are for Tongues in barrels—200 lbs. net—pickle on.

Half barrels, one-half price of barrels plus $1.00 each.

Quarter barrels, one-fourth price of barrels plus $1.00 each.

1	Short Cut, 36 to 40 pieces	71 00
2	Short Cut, 41 to 45 pieces	69 00
3	Short Cut, 46 to 50 pieces	67 00
4	Short Cut, 51 to 55 pieces	59 00
5	Short Cut, 56 to 60 pieces	57 00
6	Long Cut, 30 to 35 pieces	61 00
7	Long Cut, 36 to 40 pieces	54 00
8	Long Cut, 41 to 50 pieces	51 00

7	Extra Neatsfoot	64
8	No. 1 Neatsfoot	59
9	Acidless Tallow	64
10	Delight—Miners	66

Oil weights 7½ lbs. per gallon. Barrels contain about 50 gallons each. Prices are for oil in barrels.

Advance for smaller packages:

Half-barrels	5
10-gallon jacket cans	15
5-gallon cans, 2 to case	15

Write or wire for special prices on carload lots.

F. O. B. Kansas City, Omaha and St. Joseph Plants.

F. O. B. St. Paul Plant, 3c per gallon extra.

See

BASIS CIRCULAR

for

QUOTATIONS

We are quoting in this list the new style package of

SLICED DRIED BEEF

Packed in half pound net boxes ten to the carton.

Send us an order. It will sell.

BARRELED BEEF AND S. P. BEEF HAMS

Prices are for Beef in barrels (200-lb. net pickle on).

Hardwood half-barrels half the price of barrels plus $1.00 each.

Hardwood quarter-barrels one-fourth the price of barrels plus $1.00 each.

			Per barrel
Barreled Corned Beef	1	Fulton Market Brand Beef.	18 00
	2	Swift & Co. Extra Plate or Extra Family Beef	17 00
	3	Swift & Co. Plate or Family Beef	15 00
	4	Kenwood Brand Plate or Kenwood Brand Family Beef	14 00
	5	Columbia Brand Plate Beef	13 00
	6	Imperial Brand Plate Beef	12 00
	7	Swift & Co. Extra Mess Beef	17 00
	8	Mess Chuck Beef	17 00
	9	Rolled Boneless Beef	22 00
	10	Rump Butt Beef	20 00
	11	Gate City Brand Plate Beef	15 00
	12	Riverside Brand Plate Beef	12 00
	13	Mess Beef Rumps	none
	14	Lean Ends (St. Paul only)	22 00
	15	Beef Ham Outsides	26 00
			Bbls.
Special Mild Corned Beef (St. P. only)	15	Mess Chucks (St. Paul only)	21 00
	16	Lean Ends (St. Paul only)	23 00
	17	Rump Butts	23 00

BARRELED PORK

Prices are for Pork in barrels.

Hardwood half-barrels half the price of barrels plus $1.00 each.

Hardwood quarter-barrels one-fourth the price of barrels plus $1.00 each.

Mess Pork in barrels and half-barrels only.

NOTE—Price on Mess Pork quoted below is market when list goes to press, and subject to change without notice. We will invoice Mess Pork on basis of Chicago Board of Trade closing market date of shipment.

			per barrel
Mess Pork	1	Old	none $....
	2	New	19 50
Short Cut Mess	3	N. Y. Cut Family, 35 to 45 pcs	28 00
	4	N. Y. Cut Family, 48 to 55 pcs	none 29 00
Clear Family Pork	5	Boneless, (St. Paul only)	31 00
Clear Pork	6	Norton Brand, 70 to 85 pcs.	19 00
Backs (Fat Backs)	7	Riverside Brand, 51 to 65 pcs	20 00
	8	Woodlawn Br. Fat Backs, 36 to 45 pcs	17 75
	9	Pine Tree Brand Clear, 75 to 90 pcs	none 17 50
Shoulder Cuts	10	Franklin Br'd Short Cut, 18 to 34 pcs	19 00
	11	Franklin Br'd Short Cut,	

BEEF CASINGS

All Beef Casings subject to 5% confidential discount.

			In Tierces	Smaller Pkgs.
Rounds	1	(Domestic) Wide, 140 sets, per set	23½	27½
	2	(Dom.) Medium, 180 sets, per set	22½	26½
	3	(Export) Wide, 140 sets, per set	34	38½
	4	(Export) Medium, 180 sets, per set	31	35
	5	(Export) Narrow, 225 sets, per set	31	35
		Beef Rounds measure 100 ft. to set.		
Middles	6	Regular, 110 sets, per set	53	56
	7	Narrow, 140 sets, per set	46	48
		Beef Middles measure 57 ft. to set.		
Bungs	8	Regular, 400 pcs, per pce.	21	23
	9	Narrow, 500 pcs, per pce.	21	23

To obtain delivered prices on Beef Casings figure freight 650 lbs. per tierce.

We cannot accept orders for Beef Rounds and Middles by the set when quantity is less than

			Per lb.	Per *bbl.	Per *trc.
S.P. Beef Hams	1	Sets, medium avg.	21	49 00	73 50
	2	Inside, med. avg.	24	56 00	84 00
	3	Outsides, med. avg.	12	28 00	42 00
	4	Knuckles, med. avg	21	49 00	73 50

Light avg. ½c per lb.; 50c bbl.; 75c tierce, under price Medium. *Bbls. 220-lb. net, *Tcs. 330-lb. net, pickled weight.

PICKLED GOODS

Tripe, Mild Salt Pickle
Net weight packed

Cooked	Tc. 300 lb.	Bbl. 200 lb.	½ Bbl. 75 lb.	¼ Bbl. 35 lb.	⅛ Bbl. 17 lb.	Kit 13 lb.
1 Regular	$15 00	$10 00	$4 80	$2 40	$1 40	$1 05
2 Honey Comb..	18 00	12 00	5 60	2 80	1 60	1 20

Tripe, Pickled in Vinegar
Net weight packed

Cooked	Tc. 300 lb.	Bbl. 200 lb.	½ Bbl. 75 lb.	¼ Bbl. 35 lb.	⅛ Bbl. 17 lb.	Kit 13 lb.
3 Regular	$18 00	$12 00	$5 60	$2 80	$1 60	$1 20
4 Honey Comb out....	21 00	14 00	6 40	3 20	1 80	1 35

Pork Feet, Tongues, Etc.
Vinegar Pickled
Net weight packed

Cooked	Tc.	Bbl.	½ Bbl.	¼ Bbl.	⅛ Bbl.	Kit

		35 to 55 pcs.....none	19	50
	12	Brookfield Brand (lean pieces).....	28	00
Buckeye Brand	13	The cut next to the ham...	24	00
Kenwood Brand	14	Clear Fat Butts.....	17	00
	15	Premium Brand boneless, 60–70 pcs.....	38	00
	16	Belly Pork, boneless, heavy (St. Paul only).....	37	00
Belly Cuts	17	Winchester Brand, boneless	19	00
	18	Brisket, Boneless (St. Paul) 60–95 pcs.....	19	00
	19	Brisket, Boneless (St. Paul) 131–165 pcs.....	18	50

CREMOL

For Candy Makers

Used to advantage wherever Cocoa Butter, Cream, etc., are used in Chocolate coating, Caramel work, Marshmallows, Creams, etc.

We invite inquiry. Formulae furnished on application.

Grades	Melting Point	Price in barrels Per lb.
1 Extra	150°	11
2 Regular	125°	13
3 Special	95°	14
4 Confectioners Oil	85°	16

Packed in bbls. about 400 lbs. each; ½-bbls.. 15 sets, or Beef Bungs when quantity is less than 25 pcs. Smaller quantities should always be ordered by weight.

10	(Domestic) Rounds, 25, 50, 100-lb. kegs, with salt.....lb.	7½
11	(Export) Rounds, 25, 50, 100-lb. kegs, with salt.....lb.	9
12	Middles, 25, 50, 100-lb. kegs, with salt.....lb.	11
13	Bungs, 25, 50, 100-lb. kegs, with salt	lb. 20

Medium width Beef Casings are usually preferred and orders will be filled accordingly unless otherwise specified.

14	Weasands, Dried.....pce.	10
15	Bladders, Dried (Putty containers)	doz. out
16	Bladders, Dried (Sausage containers)..	out

PORK CASINGS

All Pork Casings subject to 5% confidential discount

1	Medium Tin Pails, with salt, medium width..... per pail	$2 05
2	Large Tin Pails, with salt, medium width.....per pail	4 10
3	25, 50, 100, 200-lb. kegs, with salt, medium width.....per lb.	40
4	Selected Wides, with salt....per lb.	35
5	Medium width free of salt, basis.....per lb.	1 00

	300 lb.	200 lb.	75 lb.	35 lb.	17 lb.	13 lb.
1 Pork Feet	$18 00	$12 00	$5 60	$2 80	$1 60	$1 20
2 Pork Tongues	50 00	20 80	10 40	5 40	4 05	
3 Pork Snouts	out	20 00	8 80	4 40	2 40	1 80
4 Lamb Hearts	out	15 00	6 80	3 40	1 90	1 45
5 Ox Lips	out	15 00	6 80	3 40	1 90	1 45
6 Ox Hearts	out	20 00	8 80	4 40	2 40	1 80
7 Lamb Tongues, long cut (Chgo only)		30 00	12 80	6 40	3 40	2 55
8 Lamb Tongues, short cut (Chgo only)		35 00	14 80	7 40	3 90	2 85

Specialties in Glass
Cooked and Spiced

12 Jars to Case	Large Jars Net Wgt 26 oz.	Small Jars Net Wgt 15 oz.
Lamb Tongues (Chgo only) per doz.	$6 50	$4 00

Plain Pickle—Uncooked

Hard Wood ½ Bbls—Half price bbls. plus $1.00 each.

Hard Wood ¼ Bbls—One-quarter price bbls. plus $1.00 each.

Hard Wood ⅛ Bbls.—One-eighth the price bbls. plus $1.00 each.

Net weight packed	Tierce 300 lb.	Bbl. 200 lb.
1 Pork Tongues....out	$37 00	$25 00
2 Sheep Tongues	....	....

½-bbls. and 60-lb. tubs, ½c higher; 10 and 20-lb. pails 1c higher. Subject to 5 per cent commission.

OLEOMARGARINE

Prices quoted you direct by Oleomargarine Department

Basis price, 60-lb. tubs, solid packed.

Differentials for other packages as follows:

	Per lb. Advance
1-lb. Prints or Rolls	1
2-lb. (and over) Prints or Rolls	½
10-lb. Tubs	1
30-lb. Solids	½
10-lb. and 20-lb. Cases	½

Solids, packed in 10, 20, 25, 30, 40 and 60 lb. tubs.

Rolls or Prints, packed in 10, 30, 48 and 60 lb. cases.

All grades to be sold out within fourteen days after shipment.

How to Apply for Uncolored Retail Oleomargarine License

In order to take out license for the sale of

6 Bungs, Export, 400 pcs. to tce	per pc.	19
7 Bungs, Prime, 500 pcs. to tce.	per pc.	12
8 Bungs, Small Prime, 600 pcs. to tce	per pc.	6½
9 Bungs, Narrow, 800 pcs. to tce	per pc	4½
10 Paunches, 300 pcs. to tce	per pc.	7
11 Middles, 130 sets to tce	per hog set	19
12 Bladders	per doz.	out

Pork Bungs, Paunches and Middles in less than tierce lots, 3c per piece over list.

SHEEP CASINGS

All Sheep Casings subject to 5% confidential discount

	Per bdl.
1 American, narrow (⅜ to ½ in.)	$ 65
2 American, medium	1 65
3 Imported, medium	1 65
4 Imported, Wide	2 15

30 to 50 bundles to keg

5 American Sheep Casings, med. tin pails	per pail	$5 40
6 American Sheep Casings, large tin pails	per pail	10 80

NOTE: All Beef, Pork and Sheep Casings shipped from Fort Worth will be invoiced at above prices, F. O. B. Fort Worth.

3	Ox Lips	16 00	11 00
4	Spare Ribs, belly pcs	25 00	17 00
5	Pork Tails	22 00	15 00
6	Neck Bones	out	....
7	Pork Hocks	out	....
8	Pork Snouts	16 00	11 00
9	Pork Ears	13 00	9 00
10	Pork Lips	13 00	9 00

Pork Chitterlings—Mild Pickle

	Bbl.	½ Bbl.	¼ Bbl.	⅛ Bbl.	Small Kit
1 Uncooked	$13 00	$7 25	$4 25	$2 75	$2 00
2 Cooked out	32 00	13 60	6 80	3 60	2 70

Stearine

1 No. 1 Oleo Stearine. Write or wire for price.

Price subject to change with notice. Wire for confirmation on all sales.

Uncolored Oleomargarine, the dealer will make application on Form No. 11, signing it before a Notary or in the presence of witnesses, after which send application, together with exchange, to Internal Revenue Collector, in the district in which he resides, at the rate of 50 cents per month, from the first of the month in which he begins sale of Oleomargarine until June 30th following, which is the end of Revenue year.

Application, Form 11, furnished by us or any Revenue Collector on request.

Restaurants, hotels, institutions and customers who make no sales, license not required.

Retail dealers, hotels, restaurants, boarding houses and private institutions of all kinds are forbidden by law, under heavy penalty, to artificially color uncolored oleomargarine. Same law specifically provides that a consumer may artificially color uncolored oleomargarine "for the use of his own family table without compensation."

NOTE: When ordering Sausage Casings please be explicit and always state plainly kind and selection wanted.

CREAM LAUNDRY SOAP

is

THE LEADER

Week Beginning June 20.

Use prices in effect in your territory: 10 baseballs free with each box, or 10 bags of marbles free with each box, or 1 grocers' delivery basket free with each box.

If you have delivery baskets on hand and wish to use marbles or baseballs, we will charge 60c for the baskets and forward either baseballs or marbles to cover your stock.

DRY SAUSAGE, ETC.

All This Season's Manufacture

Prices are for Product packed in 50-lb. and 100-lb. boxes. 25-lb. boxes ½c per lb. advance, except no advance on items marked *.

			Per lb.
	1	Brunswick	46
	2	Gothaer	46
	3	Premium	43
Cervelat	4	Ashland	40
Pork	5	Empire	37
Bungs	6	*Thuringer (new)	21
	7	*Acorn (new)	18
	8	*Essex (new)	15
	9	Empire	30
Cervelat	10	Franklin	29
Beef	11	Buckeye, St. Paul only	22
Middles	12	*Acorn (new)	17
	13	*Essex (new)	14
14		*Mettsausage (new) (Chicago only)	21
15		Lebanon	18
16		Farmer	22
17		Holsteiner	20
18		Goteborg	30
	19	Premium Ltd	40
	20	Ashland	35
	21	—R— (Push Sales)	25
Salami	22	—P— (Push Sales)	20
Beef	23	Empire	29
Middles	24	Franklin	27
	25	—E— (Push Sales)	15
	26	Acorn (new)	18
Milano	27	Alessandria	43
Salami	28	Premium	38

DOMESTIC SAUSAGE

Pure Pork Sausage, Fresh Sausage, Frankfurts, Bologna, and Specialties will be invoiced at the following differentials from prices shown:

No Advance

1-lb. cartons ..... 12 to case
6-lb. tins ..... 4 to crate
7-lb. tins ..... 4 to crate
50-lb. boxes

½c Per Lb. Advance

10-lb. cartons ..... 6 to crate
25-lb. boxes
30-lb. boxes

¼c Per Lb. Advance

5-lb. cartons (no advance on Brookfield)
1-lb. cloth bags ..... 6 to case
2-lb. cloth bags ..... 6 to case
10-lb. cartons ..... 2 to crate
46-lb. tin cans ..... 1 can to crate
56-lb. tin cans ..... 1 can to crate
20-lb. boxes

¾c Per Lb. Advance

28-lb. wood pails
30-lb. wood pails

1c Per Lb. Advance

23-lb. tin buckets ..... 1 bucket to crate
28-lb. tin buckets ..... 1 bucket to crate

1¼c Per Lb. Advance

1-lb. cartons ..... 6 to case
10-lb. cartons ..... 1 to crate
10-lb. tin pails ..... 6 to crate
10-lb. boxes

2½c Per Lb. Advance

1-lb. cartons ..... 20 to case

SPECIALTIES

Smoked (Uncooked)

1		Smoked Cottage Roll	30

Cooked (Not Smoked)

Liver	2	Prime (in pork bungs)	13½
Flavor	3	Regular (in pork bungs)	13
‡Sausage	4	Round (in beef rounds)	9
Head	5	Crystal (Denver only)	14
Cheese	6	‡Regular	10

Cooked and Paraffined

7		Ashland Brand Cooked Specialty	14
8		Prepared Cooked Specialty	13½
9		Luncheon Roll (Omaha only)	32

Smoked and Cooked

10		New England Style Luncheon Specialty	20
11		Liberty Cooked Specialty	14
12		Premium Minced Specialty (Chicago, St. Paul, Denver)	14
13		Minced Luncheon Specialty in Bladders	12
14		Minced Luncheon Specialty in Bungs	12
15		Leona Style Sausage	12
16		‡Tongue and Blood Sausage	16
17		‡Blood Sausage	10
Liver	18	Brunswick (in hog bungs)	17
Flavor	19	‡Prime (in hog bungs)	14
Sausage	20	‡Regular (in hog bungs)	13½

Miscellaneous

1	Premium Beef Tongues, Cooked and Pressed, 3-lb. bricks (Ft. Worth only)	39
2	‡Peerless Brand Cooked Specialty (K. C. and Denver)	14
3	Polish Style Sausage	10
4	‡Garlic Style Sausage	10
5	Swift's Condensed Chili, 6-lb. bricks	15½

Pork Bungs	29	Ashland	36
	30	Empire	34
Milano Salami Beef Middles	31	Premium, 16 inch	34
	32	Pork Bungs	out
D'Arles	33	Pork Bungs, 2d cut (Menage)	out
	34	Beef Middles, 16 inch	34
Frisses (Sopressata)	35	Premium	37
	36	Empire	33
37 Genoa			47
38 Lyon (Last Season's)		(Push Sales)	35
39 Peperoni		Ltd	32
40 Roma			30
41 Roma, hot			30
	42	La Primera Ltd	44
Mortadella	43	Ashland (Push Sales)	24
	44	Empire	22
	45	Acorn (new)	19
46 Capicolli, hot			45
47 Chorizos			35
48 Chorizos with lard, 4 lb. 7 oz. net, 12 tins to case doz			18 00
49 Chorizos with lard, 2 lb. net, 12 tins to case, doz			10 00
50 Chorizos with lard, 1 lb. net, 24 tins to case, doz			6 00
51 Chorizos without lard, 12 lb. 8 oz. net 8 tins to case, lb			40
52 Chorizos without lard, 1 lb. 4 oz. net, 12 tins to case		doz.	9 00
53 Chorizos without lard, 10 oz. net, 24 tins to case		doz.	5 00
	54	Italian Style, Il Primo	

‡c Per Lb. Reduction
100-lb. boxes

1c Per Lb. Reduction
1-lb. cloth bags ..... 12 to case
2-lb. cloth bags ..... 12 to case

Products marked ‡ are made with cereal. Can supply without cereal when orders so specify at ‡c per lb. advance, but must have at least 48 hours notice.

Packages shown above contain net weight indicated.

Prices shown below are basis prices. They are followed by notations showing styles of packages in which the product may be put up.

Pure Pork Sausage

	1	Link	20
		1-lb. cartons, 6 or 12 to case	
		5-lb. cartons, 6 to crate (for Hotel trade)	
Brookfield Brand	2	Patties	18
		1-lb. cartons, 6 or 12 to case	
	3	Bulk	17
		1-lb. cartons, 6 or 12 to case	
		1-lb. cloth bags, 6 or 12 to case	
		2-lb. cloth bags, 6 or 12 to case	
		5-lb. cartons, 6 or 12 to crate	
		Kansas City and Ft. Worth have discontinued manufacturing Brookfield for the season.	
	4	Small in Sheep Casings	16
		1-lb. cartons, 20 to case	
		10-lb. cartons, 6 to crate	
		28-lb. wooden pails	
		23-lb. tin buckets	
	5	Medium in Pork Casings	14
	6	Swift's Condensed Chili, 1-lb. bricks, 6, 12 or 24 in case as ordered	17
	7	‡Mexican Style Sausage (Ft. Worth and Denver only)	14
	8	Ring Mettwurst (St. Louis, N. S. Y., Denver and So. Omaha)	14
	9	‡Liver Cheese, 5-lb. bricks (K. C., So. Omaha, St. Joe, and Ft. Worth)	14
	10	‡Smoked Link Sausage	11
		Packed in 25, 50 and 100 lb. boxes.	
	11	Boneless Souse	10
		(In 10 lb. boxes only and priced this basis.)	

Jellied in Tins

	12	Jellied Beef Tongue (Chicago and So. Omaha only)	45
		7 lb. tins, 4 to crate.	
	13	Jellied Luncheon Tongue	25
	14	Jellied Luncheon Corned Beef	18
	15	Pan Souse	14

Loaf Style

	16	Baked Luncheon Loaf	15
		Packed in 25 and 50 lb. boxes.	

Lincoln Sausage

In Mild Salt Pickle—We do not guarantee Lincoln Sausage. We ship at buyer's risk only.

	Net weight Sausage packed			
	Small Kits 13 lb.	¼ Bbl. 18 lb.	½ Bbl. 35 lb.	¾ Bbl. 70 lb.
1 Prem. Minced Spec'y.	$....	$2 90	$5 30	$10 35
2 Minced Luncheon Spec'y.	....	2 50	4 60	8 95

Hams	55	Prosciutto	38
		Virginia Style, Monticello Brand	40

HOGS AND PIGS—DRESSED

Fresh

	Per lb.
1 Hogs, 200 to 250 lb. avg.	12½
2 Hogs, 175 to 200 lb. avg.	12½
3 Hogs, 150 to 175 lb. avg.	12½
4 Hogs, 125 to 150 lb. avg.	13½
5 Hogs, 100 to 125 lb. avg.	13½
1 Pigs, 80 to 100 lb. avg.	13½
2 Pigs, 60 to 80 lb. avg.	13½
3 Pigs, 50 to 60 lb. avg.	13½
4 Pigs, 30 to 50 lb. avg.	13½

Frozen Pigs

1 80 to 100 lb. avg.	out
2 60 to 80 lb. avg.	out
3 50 to 60 lb. avg.	out
4 30 to 50 lb. avg.	out

Above prices are F. O. B. Missouri River and for Shipper Dressed Hogs and Pigs. 1½c additional for hogs heads off.

S. P. Meats—For Trade

S. P. Meat quotations named are loose, unless otherwise stated.

If packed in tierces, pickle off, 1c per lb. advance.

If packed in tierces, pickle on 1½c per lb. advance; in 500-lb. boxes, ½c advance; in slack barrels, ½c advance.

1	S.P. Hams, 6- 8 lbs. avg.	out
2	S.P. Hams, 8-10 lbs. avg.	out
3	S.P. Hams, 10-12 lbs. avg.	21½
4	S.P. Hams, 12-14 lbs. avg.	21½

Family Style	6	Same package assortment as small; also 25-lb. and 50-lb. boxes and 46-lb. tin cans Will ship in Pork Casings unless orders specify Sheep Casings. Bulk. 10-lb. cartons, 6 to crate 30-lb. wood pails 28-lb. tin buckets 56-lb. tin cans	13
	7	12 in. Links (Pork Casings)	13
	8	20 in. Links (Pork Casings)	13
Country Style	9	Bulk. Same package assortment as Family Style except not packed in 1-lb. cartons.	12
Smoked Country Style	10	4 in. Links (Pork Casings)	15
	11	12-in. Links (Pork Casings). 10-lb. cartons, 6 to crate 25-lb. boxes	14

Fresh Sausage

1	‡Midget Link 5-lb. cartons, 6 to crate 10-lb. cartons, 6 to crate		13
	2	Link.	11
	3	Bulk.	10
‡Woodlawn		Same package assortment as Country Style, also 10-lb. tin pails	
	4	Link.	10
	5	Bulk.	9
‡XXBrand		10-lb. cartons 6 to crate 25 and 50-lb. boxes	

3‡Bologna Style Sausage	1 50	2 00	3 55		6 35
4‡Link Sausage	1 75	2 35	4 25		8 25
5‡Smoked Link Sausage.	1 75	2 35	4 25		8 25
6‡Frankfurt Style Sausage	2 00	2 70	4 95		9 65
7‡Club Frankfurts	1 75	2 35	4 25		8 25
8‡Head Cheese	....	2 15	3 90		7 55
9‡Polish Style Sausage..	1 60	2 15	3 90		7 55

Will fill orders for Lincoln Sausage in vinegar pickle at same prices.

Sausage in Oil

We do not guarantee Sausage in Oil. We ship at buyer's risk only.

			Net wt. Per tin	Per Crate
‡Bologna Style Sausage	1	Sm. tins, 2 to crate	17 lbs.	$5 50
	2	Lg. tins, 1 to crate	45 lbs.	6 50
‡Frankfurt Style Sausage	3	Sm. tins, 2 to crate	17 lbs.	6 00
	4	Lg. tins, 1 to crate	45 lbs.	7 50
Club ‡Frankfurt Style Sausage	5	Sm. tins, 2 to crate	17 lbs.	5 75
	6	Lg. tins, 1 to crate	45 lbs.	7 00
‡Smoked Link Sausage	7	Sm. tins, 2 to crate	17 lbs.	5 75
	8	Lg. tins, 1 to crate	45 lbs.	7 00

Cooked Hams shipped from Ft. Worth will be invoiced 1c per pound higher F. O. B. Kansas City than shown on this list.

5	S.P. Hams, 14-16 lbs. avg.	out
6	S.P. No. 1 Skd. Hams, 10 lbs. and down	out
7	S.P. No. 1 Skd Hams, 12-16 lbs. avg.	out
8	S.P. No. 1 Skd Hams, 18-20 lbs. avg.	out
9	S.P. No. 1 Skd Hams, 22-24 lbs. avg.	out
10	S.P. No. 1 Skd Hams, 24-28 lbs. avg.	out
11	S.P. No. 1 Skd Hams, 28-32 lbs. avg.	out
12	S.P. No. 1 Skd Hams, 32-lbs. up	out
13	S.P. No. 1 Picnics, 3- 5 lbs. avg.	13½
14	S.P. No. 1 Picnics, 5- 6 lbs. avg.	12½
15	S.P. No. 1 Picnics, 6- 8 lbs. avg.	12½
16	S.P. No. 1 Picnics, 8-10 lbs. avg.	11½
17	S.P. No. 1 Picnics, 10-12 lbs. avg.	11½
18	S.P. No. 1 Picnics, 12-14 lbs. avg.	10½
19	S.P. Clear Bellies, 4- 6 lbs. avg.	20½
20	S.P. Clear Bellies, 6- 8 lbs. avg.	20½
21	S.P. Clear Bellies, 8-10 lbs. avg.	19½
22	S.P. Clear Bellies, 10-12 lbs. avg.	17
23	S.P. Clear Bellies, 12-14 lbs. avg.	15
24	S. P. Clear Bellies, 14-16 lbs. avg.	13½
25	S.P. Clear Bellies, 18-20 lbs. avg.	13½
26	S.P. Boneless Shoulder Butts, tierces.	

Frankfurts

1	Premium, small (in sheep casings), 1 lb. pkgs., 6 or 12 to case	19
2	Premium, small (in sheep casings)	17
3	Premium (in pork casings)	15
4	‡Vienna (in sheep casings)	15
5	‡Regular (in sheep casings)	13
6	‡Club (in pork casings)	11

10 lb. cartons, 6 to crate.
25 lb. boxes.

Premium Frankfurts shipped in Pork Casings unless orders specify Sheep Casings.

Bologna

1	Premium—Round, Long or Large	11
2	Garlic, Round, Long or Large	11
3	Clinton (in Weasands)	14
4	‡Canvasback	11
5	‡Neptune (paraffined)	9
6	‡Regular, Round, Long or Large	9

Packed in 25, 50 and 100-lb. boxes.

Cooked Hams, Picnics and Loins

Prices are for product packed in 50 lb. and 100 lb. boxes. 25 lb. boxes ½c per lb. advance.

			Round	Flat
Premium	1	Skin on, surplus fat off, smoked	43	44
	2	Skinned, closely fatted, smoked	44	45
	3	Skinless	46	47
	4	Swift's Baked Ham	..	47
Empire	5	Skin on, surplus fat off, smoked	40	..
	6	Skinned, closely fatted, smoked	41	..
Gem	7	Skin on, surplus fat off, smoked	24	..
Picnic	8	Skinned, closely fatted, smoked	25	..
Loin Roll	9	Peerless (in Beef Bungs)	50	..

NOTE: Unless orders specify flat style, round cooked ham will be shipped.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.
All prices are quoted subject to market changes and subject to our having the product in stock.
We do not guarantee to ship product as ordered unless specific arrangements have been made.

FANCY MEATS

Unless otherwise specified, prices shown below are for Fancy Meats at following advances over loose basis.

Barrels	½c adv	50-lb. boxes	2 c adv
100-lb. boxes	1½c adv	25-lb. boxes	2½c adv
75-lb. boxes	1½c adv	Smaller pkgs.	2½c adv

Iced Cases at Following Advances:

250 lb. boxes	1 c	75 lb. boxes	2 c
200 lb. boxes	1½c	50 lb. boxes	2½c
150 lb. boxes	1½c	25 lb. boxes	2½c
100 lb. boxes	1½c	Smaller packages	3 c

Iced Barrels ..... 1½c advance

Refrigerator Boxes..1¼c advance over barrels

Prices on items marked "X" apply on all packages except iced packages and mean loose same as boxed.

Fresh	Beef	4½
Brains	Sheep	5
In Pails	Pork	5

All Brains from Ft. Worth 1c per lb. advance.

Above prices are for Brains packed in 10-lb. pails, 6 pails to crate.

Crates containing less than 6 10-lb. pails ..... 1c per lb. adv.

Crates containing 5-lb. pails, 6 to crate ..... 1c per lb. adv.

Crates containing less than 6 5-lb. pails ..... 2c per lb. adv.

Frozen Brains 1c per pound less.

Blood	Beef, fresh	per lb.	5
Cheek Meat	Beef, loose, frozen only	per lb.	5½
	Pork, loose, frozen only	per lb.	6½

SMOKED MEATS
Sugar Cured

All Premium Meats, including Dried Beef and Tongues will be wrapped in printed parchment paper, without extra charge.

Burlap wrapping 1c per lb. extra.

All Empire Briskets, Dixie Bacon Squares, Oxford Bacon Bellies, will be wrapped in parchment paper without extra charge.

All other Smoked Meats will be shipped unwrapped unless otherwise ordered.

1½c per lb. advance—in parchment.
2c per lb. advance—in muslin or white drill.
2c per lb. advance—in burlap.

Boxing Differentials

Prices are for Meats packed in 100-lb. to 500-lb. boxes and bbls.

75-lb. boxes	½c advance
50-lb. boxes	¾c "
25-lb. boxes	¼c "
Smaller packages	1½c "
Burlap sacks	¼c reduction
Loose (except Premium Hams and Bacon)	¼c reduction

Expire Briskets and Dixie Bacon Squares packed only in 100-lb. boxes or lighter.

All Premium Meats, except Dried Beef, packed only in 100-lb. boxes or lighter.

All smoked meats invoiced on basis average shipped. When short an average any item ordered, will use our judgment in making substitution, except where orders specify "Do not substitute" in which cases will let item go short.

FRESH AND FROZEN PORK CUTS, ETC.

Unless otherwise specified, prices in this column are for Meats packed in 100-lb. boxes.

Barrels	½c reduct'n	25-lb. bxs	¼c advance
75-lb. bxs	½c advance	Single piece	
50-lb. bxs	¾c advance	boxes	1c advance

Iced Cases at following advance:

100-lb. iced cases	¾c	25-lb. iced cases	1½c
75-lb. iced cases	¼c	Refrig. boxes	¾c
50-lb. iced cases	1¼c		

To avoid shortages, will use our judgment substituting averages—one higher or lower than ordered, except when orders specify certain average, or cancel.

Pork Loins will be invoiced basis average shipped.

		Fresh Per lb.	Frozen Per lb.	
Loins	16 lbs. and over	16½	16½	
	12 to 15 lbs. avg	17½	17½	
	10 to 12 lbs. avg	19½	19	
	8 to 10 lbs. avg	...	19	
	Premium	20	...	
	Frozen Loins from Ft. W. 1c adv.			
	Boneless Shoulder regular trim	19	19	out
	Boneless Shoulder, cellar trim	21½	21½	
Butts	Boston Style	13½	12½	
	Chicago Style	13	...	
	Picnic	13	...	
	Buckeye	out	...	
	Blade	9½	...	

Cheek Trimmings	Sheep, loose, frozen only	per lb.	3
	Beef, loose..Ltd	per lb.	3
Chitterlings	x Pork, 25-lb. boxes	per lb.	4
	x Pork, 50-lb. boxes	per lb.	
Ears	x Pork, 25-lb. boxes	per lb.	3½
	x Pork, 50-lb. boxes	per lb.	
Feet	Calf, froz., scald., loose	per set	40
	x Pork, 25-lb. boxes	per lb.	3
	x Pork, 50-lb. boxes	per lb.	
Fries	x Lamb, large, 25-lb. bxs.	per lb.	28
	x Lamb, small, 25-lb. bxs	per lb.	27
	x Bull	per pair	5
Gall	Ox, loose	per gal.	30
Heads	Calf, froz. scalded, loose	each	60
	Calf, skinned, loose	each	35
	Lamb, skinned, loose	each	6
	Pork, loose	per lb.	5
	Pork, full cut, loose	per lb.	5½
Heads and Feet	Calf, loose	per set	1 00
Hearts	Beef, loose	per lb.	2
	Sheep, loose	per lb.	2
	Pork, loose	per lb.	2
	Pork, 25 lb. boxes, frozen		4
Jowls	Tongues in, loose	per lb.	7
	Tongues out, loose	per lb.	6
Kidneys	x Pork, 30 lb. boxes	per lb.	4

Swift's Premium

		Per lb.
Premium Hams	6 to 8 lbs. avg.	29¾
	8 to 10 lbs. avg.	29¾
	10 to 12 lbs. avg.	28¾
	12 to 14 lbs. avg.	27¾
	14 to 17 lbs. avg.	27¾
	17 to 20 lbs. avg.	28¼
	12 to 14 lbs. and up, 1c advance from Ft. Worth.	
Premium Skinned Hams	10 to 12 lbs. avg.	29¾
	12 to 14 lbs. avg.	29¾
	14 to 16 lbs. avg.	30¾
	16 to 18 lbs. avg.	30¾
	18 to 20 lbs. avg.	30¾
	22 to 24 lbs. avg.	30¾
	1c advance from Ft. Worth	
Premium Bacon	4 to 6 lbs. avg., wide	41
	6 to 8 lbs. avg., wide	37½
	8 to 10 lbs. avg., wide	34
	10 to 12 lbs. avg., wide	32
	Squares, 3 to 4 lbs. avg.	37½
	Squares, 4 to 5 lbs. avg.	34
	Squares, 5 to 6 lbs. avg.	32
	1c advance from Ft. Worth.	
Premium Bacon Sliced	CARTONS, 24—½-lb. net	40¾
	CARTONS, 12—½-lb. net	41
	CARTONS, 12—1-lb. net	40¾
	CARTONS, 6—1-lb. net	41
	GLASS JARS, 1 doz. to case, per doz.	$3 60
	F. O. B. Ft. Worth, 10c per case advance.	
	Premium Sliced Bacon in car-	

Picnics	4 to 6 lbs. avg.	12	...
	6 to 8 lbs. avg.	11½	...
	8 to 10 lbs. avg.	11	...
	10 to 12 lbs. avg.	11	...
	12 to 14 lbs. avg.	11	...
	Half skinned, ½c per lb. higher		
	All skin off, 1c per lb. higher.		
Skinned Shoulders	8 to 10 lbs. avg.	11½	out
	10 to 12 lbs. avg.	11	out
	12 to 15 lbs. avg.	11	...
	16 lbs. and over	11	...
	Roasts	13	...
	Skinned, neck bone in, ½c less avg. shipped.		
	Skin on, neck bone out, ½c less avg. shipped.		
	Rough, skin on, neck bone in, ½c less avg. shipped.		
Spare Ribs		5	5
	From Ft. Worth, 1c advance		
Trimmings	Extra Lean, fancy	11½	10
	Regular	7½	6
Tenderloins	10-lb. pails, 6 to case	48	48
	From Ft. Worth, 1c advance.		
Leaf Lard	Not rendered	8¼	...
Clear Briskets	Range in wt. 1 to 2 lbs.	9	...
Bellies	4 to 6 lbs. avg.	23	...
	6 to 8 lbs. avg.	23	...
	8 to 10 lbs. avg.	20	...
	10 to 12 lbs. avg.	17	...
	14 to 16 lbs. avg.	14	...
	18 to 20 lbs. avg.	13½	...
	Rib in, ½c lb. less.		
	10 lbs. avg. and down	22	...

Lips	Ox, unskinned, loose..per lb.	1½
	x Pork, 50-lb. boxes....per lb.	3
	x Pork, 25-lb. boxes....per lb.	
Livers	x Calf, fresh.....per lb.	27
	x Calf, froz. 22-lb. pails...per lb.	26
	x Veal, Frozen selected, 15-lb. pails..... (Chicago, St. Paul, Milwaukee only)..per lb.	33
	x Veal, froz. selected, 30-lb. pails (Shipments from all plants).....per lb.	30
	x Beef, 50-lb. boxes.....per lb.	7
	x Pork, 25-lb. bxs.....per lb.	2½
	x Lamb, 40-lb. boxes....per lb.	3
Lungs	Beef, loose.....	
	(Chicago, St. Paul only) .per lb.	3
Melts	x Pork, 25-lb. boxes....per lb.	3
	x Pork, 50-lb. boxes....per lb.	
	x Beef, 25-lb. boxes.....per lb.	
	x Beef, 50-lb. boxes.....per lb.	
	x Sheep, 25-lb. boxes....per lb.	
	x Sheep, 50-lb. boxes....per lb.	
Palates	Ox (Chicago only) loose.per lb.	2
Plucks	x Calf.....each	60
	x Pork, 25-lb. boxes....per lb.	2½
	x Sheep, 25-lb. boxes...per lb.	3
	x Sheep, 50-lb. boxes...per lb.	
Skins	Pork, frozen only.....per lb.	5½
Snouts	x Pork, 25-lb. boxes....per lb.	4

tons, shipment from Ft. Worth, ½c over list.

Empire Brand

Empire Hams	6 to 8 lbs. avg.....	26½
	8 to 10 lbs. avg.....	26½
	10 to 12 lbs. avg.....	25½
	12 to 14 lbs. avg.....	24½
	14 to 16 lbs. avg.....	24½
	18 to 20 lbs. avg.....out	25½
Empire Skinned Hams	8 to 10 lbs. avg.....	27½
	12 to 16 lbs. avg.....	27½
	18 to 20 lbs. avg.....	27½
	22 to 24 lbs. avg.....	27½
	24 to 28 lbs. avg.....	25½
	28 to 32 lbs. avg.....	24½
	32 and over.....	24½
Empire Shoulder Cuts	N. Y. Cut Shoulders.....	16½
	N. Y. Cut Shoulders, Skinned..	16½
	Picnics, 3 to 5 lbs. avg....	16½
	Picnics, 5 to 6 lbs. avg....	16½
	Picnics, 6 to 8 lbs. avg....	15½
	Picnics, 8 to 10 lbs. avg....	15½
	Picnics, 10 to 12 lbs. avg....	15½
	Picnics, 12 to 14 lbs. avg....	14½
Rolled Empire Picnics	6 to 8 lbs. avg.....	17½
	8 to 10 lbs. avg.....	16½
	10 to 12 lbs. avg.....	16½
	Tied and partly boned, shank bone in.	

Breakfast Bacon, Etc.

Empire Breakfast Bacon	4 to 6 lbs. avg., wide.....	25½
	6 to 8 lbs. avg., wide.....	25½
	8 to 10 lbs. avg., wide.....	24½

Hams	10 to 12 lbs. avg.....	21½	...	
	12 to 14 lbs. avg.....	21	...	
	14 to 16 lbs. avg.....	20½	...	
	16 to 18 lbs. avg.....	20½	...	
	18 to 20 lbs. avg.....	20½	...	
	20 to 24 lbs. avg.....	18½	...	
	24 lbs. and up.....	18	...	
Skinned Hams	10 to 12 lbs. avg.....	24½	...	
	12 to 14 lbs. avg.....	24	...	
	14 to 16 lbs. avg.....	23½	...	
	16 to 20 lbs. avg.....	23½	...	
	20 to 24 lbs. avg.....	23	...	
	24 to 26 lbs. avg.....	22	...	
	26 to 30 lbs. avg.....	20	...	
Side Meats	Rough Ribs, 50-60 lbs.	14	...	
	Rough Rib Backs, 30-40	15	...	
Back Fat	10 to 12 lbs. avg.....	9	...	
	14 to 16 lbs. avg.....	9½	...	
	20 to 25 lbs. avg.....	11½	...	
	Skinned light.....	9	...	
Neck Fat	.....	7½	...	
	Skinned.....	8½	...	
Neck Bones	.....	2½	2½	
Back Bones	.....out	2	...	
Slip Bones	Pork, tails on.....out	5	...	
	Pork, tails off.....out	4	...	
	Pork, tails off, untrimm	6	...	
Knuckles	.....	4	...	
Hocks	½ to 1 lb.....out	10	10	out
	1 lb. to 2 lbs.....out	10	10	out
	2 lbs. and over.....out	9	9	out

Oxford English	See Basis Circular.

	x Pork, 50-lb. boxes	per lb.	
	x Beef, frozen separately	per lb.	38
	x Beef, in pails	per lb.	24
	x Beef, Patty, froz only. Moulds about 1 lb. each	per lb.	13
	x Calf, selected in pairs frozen only; 6 to 8 oz.	per pair	30
Sweetbreads	8 to 10 oz	per pair	35
Sweetbreads	10 to 12 oz	per pair	45
Sweetbreads	12 to 14 oz	per pair	60
Sweetbreads	14 to 16 oz	per pair	80
Sweetbreads	16 oz. and over	per pair	90
	x Calf regular, trimmed	per lb.	36
	x Calf, Patty, froz. only. Moulds about 1 lb. each	per lb.	14
	x Lamb	per lb.	31
	x Pork, 25-lb. boxes	per lb.	6
	x Pork, 50-lb. boxes	per lb.	6
Tails	From Ft. Worth ½c advance.		
	x Ox, ½ to 1 lb	per lb.	2½
	x Ox, 1 to 1½ lbs	per lb.	3½
	x Ox, 1½ lbs. and over	per lb.	10
Tongues	x Pork, 25-lb. boxes	per lb.	10½
Weasand Meat	Pork, loose	per lb.	3

Empire Briskets	10 to 12 lbs. avg., wide	22
		15½
Winchester Bacon Backs	Boneless	out
	Ribs in	20
Winchester Breakfast Bacon	6-7 lbs. avg., Narrow	20½
	12-14 lbs. avg., Wide	20
Clover Breakfast Bacon	7- 8 lbs. avg., Narrow	19¼
	8-10 lbs. avg., Narrow	19
	14-17 lbs. avg., Wide	18¾
	18-20 lbs. avg., Wide	18½
RADIO BACON		14½
DIXIE BACON SQUARES		14½
HUNGARIAN STYLE PAPRIKA BACON (Chicago only)		14
SMOKED S. P. SPARE RIBS		out
SMOKED D. S. SPARE RIBS		out

Fancy Bacon Meats

Acorn Bacon Bellies	12 to 14 lbs. avg., wide or narrow	20
	14 to 17 lbs. avg., wide or narrow	18¾
	18 to 20 lbs. avg., wide or narrow	18¾
ACORN SQUARES		20

Style Bellies		
Country Style Squares	See Basis Circular.	
VIRGINIA STYLE SMOKED JOWLS (tongues in)		out

Atlas Brand
Same boxing differential as No. 1 Meats

Atlas Regular Hams	½c under same average Empire Regular Hams.
Atlas Skinned Hams	½c under same average Empire Skinned Hams.
Atlas Picnics	½c under same average Empire Picnics. (Ft. Worth only)

Gem and Franklin Brands
Same boxing differential as No. 1 Meats

Gem Breakfast Bacon	Rough, 1c under same average Empire or Winchester Bacon.
Franklin Breakfast Bacon	Thin, limited 5c under same average Empire or Winchester Bacon.

Quotations are for goods F. O. B. cars Kansas City, So. Omaha and St. Paul.
Cartage will be charged for any goods shipped by local freight. Our responsibility ceases after goods are receipted for in good order by Transportation Company and we will not guarantee condition of shipment on arrival at destination.

FEDERAL TRADE COMMISSION
vs
SWIFT & CO No. 271 Y

July 18 1921 Docket 453.
Witness Reporter
Davis MacRae

Southern and Western
BRANCH HOUSE PRICE LIST Y
Issued by Swift & Company U. S. A.

July 11, 1921

LARD AND SHORTENING

Pure Lard { F. O. B. Kansas City, Omaha, or St. Paul plants.

	Tierces Per lb.
Premium Pure Lard, kettle rendered	13¾
"Silverleaf" Brand Pure Lard	12¾
Bakers' Special Lard (tierces only)	12¾
Jewel Shortening	9¾
Bakers' Shortening (tierces only)	9¾
Cotosuet	10

NOTE—Premium Pure Lard or Cotosuet not put up in Butter Tubs.

Prices shown Jewel Shortening, Bakers' Shortening and Cotosuet are Cafe to all branch houses east of Rocky mountains.

When quoting Lard or Cotosuet we state price for tierces containing about 340 lbs. net. The advances for wooden packages are as follows:

	Per lb. over tierces
Drums, 60 and 65 lbs. net	¼
Drums, 110 and 115 lbs. net	¼
Half-barrels, about 100 lbs	½

DRIED BEEF

	1	Ham Sets	41½
Premium	2	Outsides	25
Dried	3	Insides	46
Beef	4	KNUCKLES	40

		Reg. Dry	
	5	Ham Sets	40½
Empire	6	Outsides	24
Dried	7	Insides	45
Beef	8	KNUCKLES	39

		Per doz.	
Premium Wafer Sliced Dried Beef	9	No. ½, glass jars, 2 doz. in case	$ 2 75
	10	No. 1, glass jars, 1 doz. in case	5 15
Empire Sliced Dried Beef	11	No. ½, glass jars, 2 doz. in case	2 00
	12	No. 1, glass jars, 1 doz. in case	3 25

Delico Sliced Dried Beef

BEEF TONGUES, SMOKED

	1	Long Cut, 3 to 4 lbs	33
Premium	2	Long Cut, 4 to 5 lbs	35
Beef	3	Long Cut, 5 lbs. up	38½
Tongues	4	Short Cut, 2 to 3 lbs	35½
	5	Short Cut, 3 to 4 lbs	39
	6	Short Cut, 4 to 5 lbs	43
	7	Long Cut, 3 to 4 lbs	31
Empire	8	Long Cut, 4 to 5 lbs	33
Beef	9	Long Cut, 5 lbs. up	36½
Tongues	10	Short Cut, 2 to 3 lbs	33½
	11	Short Cut, 3 to 4 lbs	37
	12	Short Cut, 4 to 5 lbs	41

Pickled, loose in slack barrels.....Flat list

Fresh or Frozen, loose on racks...Flat list

Fresh or Frozen, loose in slack barrels..... ½c advance

Butter Tubs, 10 lbs	2
Hardwood Tubs, iron bound, 65 lbs	½
Fancy Tubs, 20 lbs	1
Fancy Tubs, 80 lbs	½
Wooden Pails, 20 lbs	1
Wooden Pails, 10 lbs	1
Cans, 45 lbs. and 50 lbs. net, 1 to case	½
1-lb. Cartons S. L. B. Pure Lard (60 lbs. to case)	1½
1-lb. Cartons S. L. B. Pure Lard (30 lbs. to case)	2

New Style—Net Weight Tin Pails for Pure Lard

30 2-lb. net, 60-lb. net cases	3 c over tierce basis
12 5-lb. net, 60-lb. net cases	2½c over tierce basis
6 10-lb. net, 60-lb. net cases	2 c over tierce basis

New Style—New Weight Tin Pails for Jewel Shortening

24 2-lb. net, 48-lb. net cases	3 c over tierce basis
12 4-lb. net, 48-lb. net cases	2½c over tierce basis
6 8-lb. net, 48-lb. net cases	2 c over tierce basis

13 Small glass jars, 2 doz. in case, per doz 1 50

Sliced Dried Beef—Boxes

	Per lb.
14 Premium Wafer Sliced, 5 and 10 lb. wood boxes	59
15 Premium Wafer Sliced, cartons 10—¼ lb. net boxes	57
16 Empire Sliced, 5 and 10 lb. wood boxes	44
17 Empire Sliced, cartons 10—¼ lb. net boxes	42

Above packed in 6/5-lb. or 3/10-lb. boxes in case. Shipped from all plants.

18 Swift's Sliced Dried Beef, 5 lb. paper cartons, per lb 39

Sliced Dried Beef in wood boxes and paper cartons is perishable and must be sold promptly.

We guarantee our dried beef in glass jars for ninety days from date of shipment from our plant.

Fresh or Frozen, loose in boxes....1 c advance

		Pkld. Per lb.	Fresh or Frozen Per lb.
Tongues	1 x Beef, short cut, 3 lbs. and under 3½ lbs	27	25½
	2 x Beef, short cut, 3½ lbs. and under 4 lbs	28	26½
	3 x Beef, Short cut, 4 lbs. and under 4½ lbs	32	30½
	4 x Beef, short cut, 4½ lbs. and under 5 lbs	33	31½
	5 x Beef, short cut, 5 lbs. and up	34	32½
	6 x Beef, long cut, 4 lbs. and under 5 lbs	24	22½
	7 x Beef, long cut, 5 lbs. and under 5½ lbs	25½	24
	8 x Beef, long cut, 5½ lbs. and under 6 lbs	28	26½
	9 x Beef, long cut, 6 lbs. and up	29	27½

Cooking Oils and Salad Oils

Guaranteed Pure	Per lb.
1 Golden Cottonseed Cooking Oil	9¾
2 Peerless Cottonseed Cooking Oil	9½
3 Gilt Edge Cottonseed Butter Oil	9½
4 Monogram Cottonseed Salad Oil	9¾

Oil weighs 7½ lbs. per gallon. Barrels contain about 50 gallons each. Prices are for oils in barrels.

Advance for smaller packages,	Per lb.
Half-barrels	¼
5 gallon cans, 2 to case	1½
1 gallon cans, 10 to case	3
Half-gallon cans, 20 to case	5
Qt. cans, 24 to case, (Monogram Salad Oil only)	8
Pt. cans, 24 to case (Monogram Salad Oil only)	14

Write or wire for special prices on carload lots.

C. A. F. all Branch Houses east of Rocky Mountains.

Sanco Salad Oil

	Per case
1 24 Pints to the case	$ 5 75
2 24 Quart cans to the case	9 25
3 12 Half-gallon cans to the case	8 45
4 6 Gallon cans to the case	7 50

Tripe

	Per lb.
Cooked, Rolled, Frozen (3 whole pieces to box)	6
Cooked Regular (slack bbls.)	3
Frozen Cooked Beef Tripe (in 100 lb. forms)	2½
Prepared Pork Stomachs (slack bbls.)	3

Tripe in 50-lb. baskets ½c, 25-lb. baskets, ¼c higher.

Dry Salt and Bacon Meats

Loose

Calf and Lamb Tongues

		Pkld. Per lb.	Fresh or Frozen Per lb.
1	x Calf, under 1 lb., per	11	10
2	x Calf, 1 lb. to 1½ lb., Ltd	19½	18½
3	x Calf, 1½ lb. and up, Ltd	23	22
Tongues 1	Lamb, skin on, untrimmed	5½	4
2	x Lamb, skin off, untrimmed	6½	5

Premium Beef Tongues—Pickled

Prices are for Tongues in barrels—200 lbs. net—pickle on.

Half barrels, one-half price of barrels plus $1.00 each.

Quarter barrels, one-fourth price of barrels plus $1.00 each.

1 Short Cut, 36 to 40 pieces	$ 71 00
2 Short Cut, 41 to 45 pieces	69 00

Above prices C. A. F. all branch houses east of the Rocky Mountains.

Animal Oils

	Guaranteed Pure—Our Own Pressing	Per gal.
1	Extra winter Strained Lard	$ 74
2	Extra Lard	64
3	Extra No. 1 Lard	59
4	No. 1 Lard	54
5	No. 2 Lard	52
6	Pure Neatsfoot	64
7	Extra Neatsfoot	59
8	No. 1 Neatsfoot	54
9	Acidless Tallow	59
10	Delight—Miners	72

Oil weighs 7½ lbs. per gallon. Barrels contain about 50 gallons each. Prices are for oil in barrels.

Advance for smaller packages:

Half-barrels	5
5-gallon cans, 2 to case	10

Write or wire for special prices on carload lots.

F. O. B. Kansas City, Omaha and St. Joseph Plants.

F. O. B. St. Paul Plant, 3c per gallon extra.

500-lb. boxes	¼c adv	75-lb. boxes	1½c adv
300-lb. boxes	¼c adv	50-lb. boxes	1½c adv
200-lb. boxes	¼c adv	25-lb. boxes	1½c adv
100-lb. boxes	1 c adv	Sacked	¼c adv

Muslin or white drill 2c advance, parchment 1½c advance. Oxford Bellies and Country Style Squares—wrapped in parchment no extra charge.

See

BASIS CIRCULAR

for

QUOTATIONS

3	Short Cut, 46 to 50 pieces	67 00
4	Short Cut, 51 to 55 pieces	59 00
5	Short Cut, 56 to 60 pieces	57 00
6	Long Cut, 30 to 35 pieces	61 00
7	Long Cut, 36 to 40 pieces	54 00
8	Long Cut, 41 to 50 pieces	51 00

We are quoting in this list the new style package of

SLICED DRIED BEEF

Packed in half pound net boxes ten to the carton.

Send us an order. It will sell.

BARRELED BEEF AND S. P. BEEF HAMS

Prices are for Beef in barrels (200-lb. net pickle on).

Hardwood half-barrels half the price of barrels plus $1.00 each.

Hardwood quarter-barrels one-fourth the price of barrels plus $1.00 each.

			Per barrel
Barreled Corned Beef	1	Fulton Market Brand Beef.	18 00
	2	Swift & Co. Extra Plate or Extra Family Beef.....	17 00
	3	Swift & Co. Plate or Family Beef.....	15 00
	4	Kenwood Brand Plate or Kenwood Brand Family Beef.....	14 00
	5	Columbia Brand Plate Beef	13 00
	6	Imperial Brand Plate Beef.	12 00
	7	Swift & Co. Extra Mess Beef	17 00
	8	Mess Chuck Beef.....	17 00
	9	Rolled Boneless Beef.....	22 00
	10	Rump Butt Beef.....	20 00
	11	Gate City Brand Plate Beef	15 00
	12	Riverside Brand Plate Beef	12 00
	13	Mess Beef Rumps.....	none
	14	Lean Ends (St. Paul only).	22 00
	15	Beef Ham Outsides.....	26 00
			Bbls.
Special Mild Corned Beef	15	Mess Chucks (St. Paul only).....	21 00
	16	Lean Ends (St. Paul only).	23 00

BARRELED PORK

Prices are for Pork in barrels.

Hardwood half-barrels half the price of barrels plus $1.00 each.

Hardwood quarter-barrels one-fourth the price of barrels plus $1.00 each.

Mess Pork in barrels and half-barrels only.

NOTE—Price on Mess Pork quoted below is market when list goes to press, and subject to change without notice. We will invoice Mess Pork on basis of Chicago Board of Trade closing market date of shipment.

			Per barrel
Mess Pork	1	Old.....none	$....
	2	New.....	20 00
Short Cut Mess	3	N. Y. Cut Family, 35 to 45 pcs.....	28 00
	4	N. Y. Cut Family, 48 to 55 pcs.....none	29 00
Clear Family Pork	5	Boneless, (St. Paul only)...	32 00
Clear Pork Backs (Fat Backs)	6	Norton Brand, 70 to 85 pcs.	20 00
	7	Riverside Brand, 51 to 65 pcs.....	20 50
	8	Woodlawn Br. Fat Backs, 36 to 45 pcs.....	18 75
	9	Pine Tree Brand Clear, 75	

BEEF CASINGS

All Beef Casings subject to 5% confidential discount.

			In Tierces	Smaller Pkgs.
Rounds	1	(Domestic) Wide, 140 sets.....per set	23	27
	2	(Dom.) Medium, 180 sets.....per set	22	26
	3	(Export) Wide, 140 sets.....per set	36	40
	4	(Export) Medium, 180 sets.....per set	32	36
	5	(Export) Narrow, 225 sets.....per set	32	36
		Beef Rounds measure 100 ft. to set.		
Middles	6	Regular, 110 sets.....per set	55	58
	7	Narrow, 140 sets.....per set	48	50
		Beef Middles measure 57 ft. to set.		
Bungs	8	Regular, 400 pcs.....per pce.	20	22
	9	Narrow, 500 pcs.....per pce.	20	22

To obtain delivered prices on Beef Casings figure freight 650 lbs. per tierce.

We cannot accept orders for Beef Rounds and Middles by the set when quantity is less than 15 sets, or Beef Bungs when quantity is less than 25 pcs. Smaller quantities should always be ordered by weight.

			Per lb.	Per *bbl.	Per *trc.
(St. P. only)	17	Rump Butts		23 00	
S. P. Beef Hams	1	Sets, medium avg	22	51 00	76 50
	2	Insides, med. avg.	26½	61 00	91 50
	3	Outsides, med. avg	13	30 00	45 00
	4	Knuckles, med. avg	22	51 00	76 50

Light avg. ½c per lb.; 50c bbl.; 75c tierce, under price Medium. *Bbls. 220-lb. net, *Tcs. 330-lb. net, pickled weight.

PICKLED GOODS

Tripe, Mild Salt Pickle
Net weight packed

Cooked	Tc. 300 lb.	Bbl. 200 lb.	½ Bbl. 75 lb.	¼ Bbl. 35 lb.	⅛ Bbl. 17 lb.	Kit 13 lb.
1 Regular	$15 00	$10 00	$4 80	$2 40	$1 40	$1 05
2 Honey Comb	18 00	12 00	5 60	2 80	1 60	1 20

Tripe, Pickled in Vinegar
Net weight packed

Cooked	Tc. 300 lb.	Bbl. 200 lb.	½ Bbl. 75 lb.	¼ Bbl. 35 lb.	⅛ Bbl. 17 lb.	Kit 13 lb.
3 Regular	$18 00	$12 00	$5 60	$2 80	$1 60	$1 20
4 Honey Comb out	21 00	14 00	6 40	3 20	1 80	1 35

Pork Feet, Tongues, Etc.
Vinegar Pickled

Shoulder Cuts	10	Franklin Br'd Short Cut, 18 to 90 pcs	18 00
	10	Franklin Br'd Short Cut, 18 to 34 pcs	20 00
	11	Franklin Br'd Short Cut, 35 to 55 pcs	none 20 00
	12	Brookfield Brand (lean pieces)	29 00
Buckeye Brand	13	The cut next to the ham	25 00
Kenwood Brand	14	Clear Fat Butts	18 00
	15	Premium Brand, boneless, 60-70 pcs	40 00
	16	Belly Pork, boneless, heavy (St. Paul only)	39 00
Belly Cuts	17	Winchester Brand, boneless	18 50
	18	Brisket, Boneless (St. Paul) 60-95 pcs	18 50
	19	Brisket, Boneless (St. Paul) 131-165 pcs	18 00

Cremol

For Candy Makers

Used to advantage wherever Cocoa Butter, Cream, etc., are used in Chocolate coating, Caramel work, Marshmallows, Creams, etc.

We invite inquiry. Formulae furnished on application.

Grades	Melting Point	Price in barrels Per lb.
1 Extra	150°	11

10	(Domestic) Rounds, 25, 50, 100-lb. kegs, with salt, lb.	7
11	(Export) Rounds, 25, 50, 100-lb. kegs, with salt, lb.	9
12	Middles, 25, 50, 100-lb. kegs, with salt, lb.	11
13	Bungs, 25, 50, 100-lb. kegs, with salt, lb.	20

Medium width Beef Casings are usually preferred and orders will be filled accordingly unless otherwise specified.

14	Weasands, Dried, pce.	11
15	Bladders, Dried (Putty containers), doz.	out
16	Bladders, Dried (Sausage containers)	out

PORK CASINGS

All Pork Casings subject to 5% confidential discount

1	Medium Tin Pails, with salt, medium width, per pail	$2 05
2	Large Tin Pails, with salt, medium width, per pail	4 10
3	25, 50, 100, 200-lb. kegs, with salt, medium width, per lb.	40
4	Selected Wides, with salt, per lb.	35
5	Medium width free of salt, basis, per lb.	1 00

Net weight packed

Cooked	Tc. 300 lb.	Bbl. 200 lb.	½ Bbl. 75 lb.	¼ Bbl. 35 lb.	⅛ Bbl. 17 lb.	Kit 13 lb.
1 Pork Feet.	$18 00	$12 00	$5 60	$2 80	$1 60	$1 20
2 Pork Tongues		50 00	20 80	10 40	5 40	4 05
3 Pork Snouts	out	20 00	8 80	4 40	2 40	1 80
4 Lamb Hearts	out	15 00	6 80	3 40	1 90	1 45
5 Ox Lips	out	15 00	6 80	3 40	1 90	1 45
6 OxHearts	out	20 00	8 80	4 40	2 40	1 80
7 Lamb Tongues, long cut (Chgo only)		30 00	12 80	6 40	3 40	2 55
8 Lamb Tongues, short cut (Chgo only)		35 00	14 80	7 40	3 90	2 85

Specialties in Glass

Cooked and Spiced

12 Jars to Case	Large Jars Net Wgt 26 oz.	Small Jars Net Wgt 15 oz.
Lamb Tongues (Chgo only) per doz	$5 00	$3 00

Plain Pickle—Uncooked

Hard Wood ½ Bbls.—Half price bbls. plus $1.00 each.

Hard Wood ¼ Bbls.—One-quarter price bbls. plus $1.00 each.

Hard Wood, ⅛ Bbls.—One-eighth the price bbls. plus $1.00 each.

2 Regular	125°	13
3 Special	95°	14
4 Confectioners Oil	85°	16

Packed in bbls. about 400 lbs. each; ½-bbls., ¼-bbls. and 60-lb. tubs, ½c higher; 10 and 20-lb. pails 1c higher. Subject to 5 per cent commission.

Oleomargarine

Prices quoted you direct by Oleomargarine Department

Basis price, 60-lb. tubs, solid packed.

Differentials for other packages as follows:

	Per lb. Advance
1-lb. Prints or Rolls	1
2-lb. (and over) Prints or Rolls	½
10-lb. Tubs	1
30-lb. Solids	½
10-lb. and 20-lb. Cases	½

Solids, packed in 10, 20, 25, 30, 40 and 60 lb. tubs.

Rolls or Prints, packed in 10, 30, 48 and 60 lb. cases.

All grades to be sold out within fourteen days after shipment.

6 Bungs, Export, 400 pcs. to tce	per pc.	19
7 Bungs, Prime, 500 pcs. to tce	per pc.	12
8 Bungs, Small Prime, 600 pcs. to tce	per pc.	7
9 Bungs, Narrow, 800 pcs. to tce	per pc.	5
10 Paunches, 300 pcs. to tce	per pc.	7
11 Middles, 130 sets to tce	per hog set	19
12 Bladders	per doz.	out

Pork Bungs, Paunches and Middles in less than tierce lots, 3c per piece over list.

SHEEP CASINGS

All Sheep Casings subject to 5% confidential discount

		Per bdl.
1 American, narrow (⅝ to ⅞ in.)		$ 65
2 American, medium		1 65
3 Imported, medium		1 65
4 Imported, Wide		2 15
30 to 50 bundles to keg		
5 American Sheep Casings, med. tin pails	per pail	$5 40
6 American Sheep Casings, large tin pails	per pail	10 80

Net weight packed	Tierce 300 lb.	Bbl. 200 lb.
1 Port Tongues....out	$37 00	$25 00
2 Sheep Tongues	....	....
3 Ox Lips	16 00	11 00
4 Spare Ribs, belly pcs	20 00	13 75
5 Pork Tails	20 50	14 00
6 Neck Bones	out	....
7 Pork Hocks	out	....
8 Pork Snouts	14 50	10 00
9 Pork Ears	11 50	8 00
10 Pork Lips	11 50	8 00

Pork Chitterlings—Mild Pickle

	Bbl.	½ Bbl.	¼ Bbl.	½ Bbl.	Small Kit
1 Uncooked	$13 00	$ 7 25	$4 25	$2 75	$2 00
2 Cooked.out	32 00	13 60	6 80	3 60	2 70

STEARINE

1 No. 1 Oleo Stearine. Write or wire for price. Price subject to change with notice. Wire for confirmation on all sales.

How to Apply for Uncolored Retail Oleomargarine License

In order to take out license for the sale of Uncolored Oleomargarine, the dealer will make application on Form No. 11, signing it before a Notary or in the presence of witnesses, after which send application, together with exchange, to Internal Revenue Collector, in the district in which he resides, at the rate of 50 cents per month, from the first of the month in which he begins sale of Oleomargarine until June 30th following, which is the end of Revenue year.

Application, Form 11, furnished by us or any Revenue Collector on request.

Restaurants, hotels, institutions and customers who make no sales, license not required.

Retail dealers, hotels, restaurants, boarding houses and private institutions of all kinds are forbidden by law, under heavy penalty, to artificially color uncolored oleomargarine. Same law specifically provides that a consumer may artificially color uncolored oleomargarine "for the use of his own family table without compensation."

NOTE: All Beef, Pork and Sheep Casings shipped from Fort Worth will be invoiced at above prices, F. O. B. Fort Worth.

NOTE: When ordering Sausage Casings please be explicit and always state plainly kind and selection wanted.

THE LEADER

for

Week Beginning July 11,

SWIFT'S PRIDE
WASHING POWDER

100-8 pkgs. at 10c over list—1 free with 5

24-3 pkgs. at 25c over list—1 free with 5

½ free with 2—½ on either of the above

DRY SAUSAGE, ETC.

All This Season's Manufacture

Prices are for Product packed in 50-lb. and 100-lb. boxes. 25-lb. boxes ¼c per lb. advance, except no advance on items marked *. Per lb.

Billing prices below are kept very conservative. To establish your lowest prices to jobbing trade, recommend your using following differentials plus full Chicago freight.

Product quoted from—	To establish jobbers price add full freight plus—
13 to 29c	1c per lb.
30 to 39c	2c per lb.
40 and over	3c per lb.

	1	Brunswick	46
	2	Gothaer	46
	3	Premium	43
Cervelat	4	Ashland	40
Pork	5	Empire	37
Bungs	6	*Thuringer (new)	19
	7	*Acorn (new)	16
	8	*Essex (new)	14
	9	Empire	46
Cerve-	10	Franklin	29
lat Beef	11	Buckeye, St. Paul only	21
Middles	12	Dixie (N. S. Yards only)	15
	13	*Acorn (new)	15
	14	*Essex (new)	13
15		*Mettsausage (new) (Chicago only)	20
16		Lebanon	18
17		Farmer	22
18		Holsteiner	20
19		Goteborg	30
	20	Premium Ltd.	40

DOMESTIC SAUSAGE

Pure Pork Sausage, Fresh Sausage, Frankfurts, Bologna, and Specialties will be invoiced at the following differentials from prices shown.

No Advance
- 1-lb. cartons — 12 to case
- 6-lb. tins — 4 to crate
- 7-lb. tins — 4 to crate
- 50-lb. boxes

¼c Per Lb. Advance
- 10-lb. cartons — 6 to crate
- 25-lb. boxes
- 30-lb. boxes

½c Per Lb. Advance
- 5-lb. cartons (no advance on Brookfield)
- 1-lb. cloth bags — 6 to case
- 2-lb. cloth bags — 6 to case
- 10-lb. cartons — 2 to crate
- 46-lb. tin cans — 1 can to crate
- 56-lb. tin cans — 1 can to crate
- 20-lb. boxes

¾c Per Lb. Advance
- 28-lb. wood pails
- 30-lb. wood pails

1c per Lb. Advance
- 23-lb. tin buckets — 1 bucket to crate
- 28-lb. tin buckets — 1 bucket to crate

1½c Per Lb. Advance
- 1-lb. cartons — 6 to case
- 10-lb. cartons — 1 to crate
- 10-lb. tin pails — 6 to crate
- 10-lb. boxes

2½c Per Lb. Advance
- 1-lb. cartons — 20 to case

¼c Per Lb. Reduction

SPECIALTIES

Smoked (Uncooked)

1		Smoked Cottage Roll	30

Cooked (Not Smoked)

Liver	2	Prime (in pork bungs)	13
Flavor	3	Regular (in pork bungs)	12
‡Sausage	4	Round (in beef rounds)	8
Head	5	Crystal (Denver only)	12
Cheese	6	‡Regular	9

Cooked and Paraffined

7	Ashland Brand Cooked Specialty	12½
8	Prepared Cooked Specialty	13½
9	Luncheon Roll (Omaha only)	32

Smoked and Cooked

10	New England Style Luncheon Specialty	18
11	Liberty Cooked Specialty	12½
12	Premium Minced Specialty (Chicago St. Paul, Denver)	13
13	Mined Luncheon Specialty in Bladders	11
14	Mined Luncheon Specialty in Bungs	11
15	Leona Style Sausage	11
16	‡Tongue and Blood Sausage	14
17	‡Blood Sausage	10
Liver	18 Brunswick (in hog bungs)	15
Flavor	19 ‡Prime (in hog bungs)	14
Sausage	20 ‡Regular (in hog bungs)	13

Miscellaneous

1	Premium Beef Tongues, Cooked and Pressed, 3-lb. bricks (Ft. Worth only)	39
2	‡Peerless Brand Cooked Specialty (K. C. and Denver)	14

	21	Ashland	35
Salami	22	—R— (Push Sales)	25
Beef	23	—P— (Push Sales)	20
Middles	24	Empire	29
	25	Franklin	27
	26	—E— (Push Sales)	15
	27	Acorn (new)	16
Milano	28	Alessandria	43
Salami	29	Premium	38
Pork	30	Ashland	36
Bungs	31	Empire	32
Milano Salami Beef Middles	32	Premium, 16 inch	34
	33	Pork Bungs	out
D'Arles	34	Pork Bungs, 2d cut (Menage)	out
	35	Beef Middles, 16 inch	34
Frisses	36	Premium	37
(Sopressata)	37	Empire	33
38 Genoa			47
39 Lyon (Last Season's)		(Push Sales)	35
40 Peperoni		Ltd	30
41 Roma			28
42 Roma, hot			28
	43	La Primera Ltd	44
Mortadella	44	Ashland (Push Sales)	24
	45	Empire	21
	46	Acorn (new)	18
47 Capicolli, hot		Ltd.	45
48 Capicolli, sweet			46
49 Chorizos			35
50 Chorizos with lard, 4 lb. 7 oz. net, 12 tins to case doz			18.00
51 Chorizos with lard, 2 lb. net, 12 tins to case, doz			10.00

100-lb. boxes
1c Per Lb. Reduction
1-lb. cloth bags.....12 to case
2-lb. cloth bags.....12 to case

Products marked ‡ are made with cereal. Can supply without cereal when orders so specify at ½c per lb. advance, but must have at least 48 hours notice.

Packages shown above contain net weight indicated.

Prices shown below are basis prices. They are followed by notations showing styles of packages in which the product may be put up.

Pure Pork Sausage

	1	Link 18 1-lb. cartons, 6 or 12 to case 5-lb. cartons, 6 to crate (for Hotel trade)
	2	Patties 16 1-lb. cartons, 6 or 12 to case
Brookfield Brand	3	Bulk 15 1-lb. cartons, 6 or 12 to case 1-lb. cloth bags, 6 or 12 to case 2-lb. cloth bags, 6 or 12 to case 5-lb. cartons, 6 or 12 to crate Kansas City and Ft. Worth have discontinued manufacturing Brookfield for the season.
	4	Small in Sheep Casings 14 1-lb. cartons, 20 to case 10-lb. cartons, 6 to crate 28-lb. wooden pails

	3	Polish Style Sausage 9½
	4	‡Garlic Style Sausage 10
	5	Swift's Condensed Chili, 6-lb. bricks 15½
	6	Swift's Condensed Chili, 1-lb. bricks, 6, 12 or 24 in case as ordered 17
	7	‡Mexican Style Sausage (Ft. Worth and Denver only) 14
	8	Ring Mettwurst (St. Louis, N. S. Y., Denver and So. Omaha) 14
	9	‡Liver Cheese, 5-lb. bricks (K. C., So. Omaha, St. Joe, and Ft. Worth) 14
	10	‡Smoked Link Sausage 10 Packed in 25, 50 and 100 lb. boxes.
	11	Boneless Souse 9 (In 10 lb. boxes only and priced this basis.)

Jellied in Tins

	12	Jellied Beef Tongue (Chicago and So. Omaha only) 45 7 lb. tins, 4 to crate
	13	Jellied Luncheon Tongue 25
	14	Jellied Luncheon Corned Beef 16
	15	Pan Souse 12

Loaf Style

	16	Baked Luncheon Loaf 15 Packed in 25 and 50 lb. boxes.

Lincoln Sausage

In Mild Salt Pickle—We do not guarantee Lincoln Sausage. We ship at buyer's risk only.

Net weight Sausage packed

52	Chorizos with lard, 1 lb. net, 24 tins to case, doz		6 00
53	Chorizos without lard, 12 lb. 8 oz. net, 8 tins to case, lb		40
54	Chorizos without lard, 1 lb. 4 oz. net, 12 tins to case	doz.	9 00
55	Chorizos without lard, 10 oz. net, 24 tins to case, doz		5 00
Hams	56 Italian Style, Il Primo, Prosciutto		38
	57 Virginia Style, Monticello Brand		40

HOGS AND PIGS—DRESSED

Fresh

	Per lb.
1 Hogs, 200 to 250 lb. avg	13
2 Hogs, 175 to 200 lb. avg	13¼
3 Hogs, 150 to 175 lb. avg	13¼
4 Hogs, 125 to 150 lb. avg	13¼
5 Hogs, 100 to 125 lb. avg	13¼
1 Pigs, 80 to 100 lb. avg	13¼
2 Pigs, 60 to 80 lb. avg	13¼
3 Pigs, 50 to 60 lb. avg	13¼
4 Pigs, 30 to 50 lb. avg	14¼

Frozen Pigs

1 80 to 100 lb. avg out 3 50 to 60 lb. avg out
2 60 to 80 lb. avg out 4 30 to 50 lb. avg out

Above prices are F. O. B. Missouri River and for Shipper Dressed Hogs and Pigs. 1c additional for hogs heads off.

S. P. Meats—For Trade.

S. P. Meat quotations named are loose, unless otherwise stated.

Family Style		23-lb. tin buckets	
	5	Medium in Pork Casings	12
		Same package assortment as small; also 25-lb. and 50-lb. boxes and 46 lb. tin cans	
		Will ship in Pork Casings unless orders specify Sheep Casings.	
	6	Bulk	11
		10-lb. cartons, 6 to crate	
		30-lb. wood pails	
		28-lb. tin buckets	
		56-lb. tin cans	
	7	12 in. Links (Pork Casings)	11
	8	20 in. Links (Pork Casings)	11
Country Style	9	Bulk	10
		Same package assortment as Family Style except not packed in 1-lb. cartons.	
Smoked Country Style	10	4 in. Links (Pork Casings)	15
	11	12-in. Links (Pork Casings)	14
		10-lb. cartons, 6 to crate	
		25-lb. boxes	

Fresh Sausage

1	‡Midget Link		12
	5-lb. cartons, 6 to crate		
	10-lb. cartons, 6 to crate		
2	Link		10
3	Bulk		9
‡Woodlawn	Same package assortment as Country Style, also 10-lb. tin pails.		
4	Link		10

	Small Kits 13 lb.	¼ Bbl. 18 lb.	½ Bbl. 35 lb.	Bbl. 70 lb.
1 Prem. Minced Spec'y.	$	$2 70	$4 85	$ 9 65
2 MinedLuncheonSpec'y		2 35	4 25	8 25
3‡Bologna Style Sausage	1 35	1 80	3 20	6 15
4‡Link Sausage	1 60	2 15	3 90	7 55
5‡Smoked Link Sausage	1 60	2 15	3 90	7 55
6‡FrankfurtStyleSausage	1 85	2 50	4 60	8 95
7‡Club Frankfurts	1 60	2 15	3 90	7 55
8‡Head Cheese		1 95	3 55	6 85
9‡Polish Style Sausage	1 55	2 05	3 75	7 20

Will fill orders for Lincoln Sausage in vinegar pickle at same prices.

Sausage in Oil

We do not guarantee Sausage in Oil. We ship at buyer's risk only.

			Net wt. Per Tin	Per Crate
‡Bologna Style Sausage	1	Sm. tins, 2 to crate	17 lbs.	$5 50
	2	Lg. tins, 1 to crate	45 lbs.	6 50
‡Frankfurt Style Sausage	3	Sm. tins, 2 to crate	17 lbs.	6 00
	4	Lg. tins, 1 to crate	45 lbs.	7 50
‡Frankfurt Style Sausage	5	Sm. tins, 2 to crate	17 lbs.	5 75
	6	Lg. tins, 1 to crate	45 lbs.	7 00
‡Smoked Link Sausage	7	Sm. tins, 2 to crate	17 lbs.	5 75
	8	Lg. tins, 1 to crate	45 lbs.	7 00

If packed in tierces, pickle off, 1c per lb. advance.

If packed in tierces, pickle on 1½c per lb. advance; in 500-lb. boxes, ½c advance; in slack barrels, ½c advance.

1	S. P. Hams, 6- 8 lbs. avg.	out
2	S. P. Hams, 8-10 lbs. avg.	out
3	S. P. Hams, 10-12 lbs. avg.	23½
4	S. P. Hams, 12-14 lbs. avg.	out
5	S. P. Hams, 14-16 lbs. avg.	out
6	S. P. No. 1 Skd Hams, 10 lbs. and down.	out
7	S. P. No. 1 Skd Hams, 12-16 lbs. avg.	out
8	S. P. No. 1 Skd Hams, 18-20 lbs. avg.	out
9	S. P. No. 1 Skd Hams, 22-24 lbs. avg.	out
10	S. P. No. 1 Skd Hams, 24-28 lbs. avg.	out
11	S. P. No. 1 Skd Hams, 28-32 lbs. avg.	out
12	S. P. No. 1 Skd Hams, 32-lbs. up.	out
13	S. P. No. 1 Picnics, 3- 5 lbs. avg.	13½
14	S. P. No. 1 Picnics, 5 -6 lbs. avg.	13½
15	S. P. No. 1 Picnics, 6- 8 lbs. avg.	12½
16	S. P. No. 1 Picnics, 8-10 lbs. avg.	12½
17	S. P. No. 1 Picnics, 10-12 lbs. avg.	12½
18	S. P. No. 1 Picnics, 12-14 lbs. avg.	11½
19	S. P. Clear Bellies, 4- 6 lbs. avg.	20½
20	S. P. Clear Bellies, 6- 8 lbs. avg.	20½
21	S. P. Clear Bellies, 8-10 lbs. avg.	19½
22	S. P. Clear Bellies, 10-12 lbs. avg.	17
23	S. P. Clear Bellies, 12-14 lbs. avg.	15
24	S. P. Clear Bellies, 14-16 lbs. avg.	13½
25	S. P. Clear Bellies, 18-20 lbs. avg.	13½
26	S. P. Boneless Shoulder Butts, tierces	...

‡XX Brand	5	Bulk. 10-lb. cartons, 6 to crate 25 and 50-lb. boxes	9

Frankfurts

1	Premium, small (in sheep casings), 1 lb. pkgs., 6 or 12 to case	18
2	Premium, small (in sheep casings)	16
3	Premium (in pork casings)	14
4	‡Vienna (in sheep casings)	14
5	‡Regular (in sheep casings)	12
6	‡Club (in pork casings)	10

10-lb. cartons, 6 to crate.
25 lb. boxes.

Premium Frankfurts shipped in Pork Casings unless orders specify Sheep Casings.

Bologna

1	Premium—Large	11
2	" Long	10½
3	" Round	10
4	Garlic—Large	11
5	" Long	10½
6	" Round	10
7	Clinton (in Weasands)	14
8	‡Canvasback	11
9	‡Neptune (paraffined)	9
10	‡Regular—Large	9
11	‡ " Long	8½
12	‡ " Round	8

Packed 25-50 and 100-lb. boxes.

Cooked Hams shipped from Ft. Worth will be invoiced 1c per pound higher F. O. B. Kansas City than shown on this list.

Cooked Hams, Picnics and Loins

Prices are for product packed in 50 lb. and 100 lb. boxes. 25 lb. boxes ½c per lb. advance.

			Round	Flat
Premium	1	Skin on, surplus fat off, smoked	45	46
	2	Skinned, closely fatted, smoked	46	47
	3	Skinless	48	49
	4	Swift's Baked Ham	..	49
Empire	5	Skin on, surplus fat off, smoked	42	..
	6	Skinned, closely fatted, smoked	43	..
Gem Picnic	7	Skin on, surplus fat off, smoked	25	..
	8	Skinned, closely fatted, smoked	26	..
Loin Roll	9	Peerless (in Beef Bungs)	50	..

NOTE: Unless orders specify flat style, round cooked ham will be shipped.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.
All prices are quoted subject to market changes and subject to our having the product in stock.
We do not guarantee to ship product as ordered unless specific arrangements have been made.

FANCY MEATS

Unless otherwise specified, prices shown below are for Fancy Meats at following advances over loose basis.

Barrels	¼c adv	50-lb. boxes	2 c adv
100-lb. boxes	1½c adv	25-lb. boxes	2½c adv
75-lb. boxes	1½c adv	Smaller pkgs	2¾c adv

Iced Cases at Following Advances:

250 lb. boxes	1 c	75 lb. boxes	2 c
200 lb. boxes	1¼c	50 lb. boxes	2¼c
150 lb. boxes	1½c	25 lb. boxes	2½c
100 lb. boxes	1¾c	Smaller packages	3 c

Iced Barrels ..... 1¼c advance

Refrigerator Boxes .. 1¼c advance over barrels

Prices on items marked "X" apply on all packages except iced packages and mean loose same as boxed.

Fresh Brains In Pails	Beef	4½
	Sheep	5
	Pork	5

All Brains from Ft. Worth 1c per lb. advance.

Above prices are for Brains packed in 10-lb. pails, 6 pails to crate.

Crates containing less than 6 10-lb. pails ..... 1c per lb. adv.
Crates containing 5-lb. pails, 6 to crate ..... 1c per lb. adv.
Crates containing less than 6 5-lb. pails ..... 2c per lb. adv.

SMOKED MEATS

Sugar Cured

All Premium Meats, including Dried Beef and Tongues will be wrapped in printed parchment paper, without extra charge.

Burlap wrapping 1c per lb. extra.

All Empire Briskets, Dixie Bacon Squares, Oxford Bacon Bellies, will be wrapped in parchment paper without extra charge.

All other Smoked Meats will be shipped unwrapped unless otherwise ordered.

1½c per lb. advance—in parchment.
2c per lb. advance—in muslin or white drill.
2c per lb. advance—in burlap.

Boxing Differentials

Prices are for Meats packed in 100-lb. to 500-lb. boxes and bbls.

75-lb. boxes	¼c	advance
50-lb. boxes	¼c	"
25-lb. boxes	¼c	"
Smaller packages	1¼c	"
Burlap sacks	¼c	reduction
Loose (except Premium Hams and Bacon)	¼c	reduction

Empire Briskets and Dixie Bacon Squares packed only in 100-lb. boxes or lighter.

All Premium Meats, except Dried Beef, packed only in 100-lb. boxes or lighter.

All smoked meats invoiced on basis average shipped. When short an average any item ordered, will use our judgment in making sub-

FRESH AND FROZEN PORK CUTS, ETC.

Unless otherwise specified, prices in this column are for Meats packed in 100-lb. boxes.

Barrels	¼c reduct'n	25-lb. bxs	¼c advance
75-lb. bxs	¼c advance	Single piece	
50-lb. bxs	¼c advance	boxes	1c advance

Iced cases at following advance:

100-lb. iced cases	¼c	25-lb. iced cases	1¼c
75-lb. iced cases	¼c	Refrig. boxes	¾c
50-lb. iced cases	1¼c		

To avoid shortages, will use our judgment substituting averages—one higher or lower than ordered, except when orders specify certain average, or cancel.

Pork Loins will be invoiced basis average shipped.

		Fresh Per lb.	Frozen Per lb.
Loins	16 lbs. and over	16½	16½
	11 to 15 lbs. avg	17½	17½
	10 to 12 lbs. avg	20	19
	8 to 10 lbs. avg	...	19
	Premium	21	...
	Frozen Loins from Ft. W. 1c adv.		
	Boneless Shoulder regular trim	19	19 out
	Boneless Shoulder, cellar trim	21½	21½
Butts	Boston Style	13	12½
	Chicago Style	12½	...
	Picnic	13	...
	Buckeye	13	...
	Blade	9½	...
	4 to 6 lbs. avg	13½	...

Frozen Brains 1c per pound less.

Blood	Beef, fresh	per lb.	5
Cheek Meat	Beef, loose, frozen only	per lb.	5½
	Pork, loose, frozen only	per lb.	6½
	Sheep, loose, frozen only	per lb.	3
Cheek Trimmings	Beef, loose....Ltd.....	per lb.	2½
Chitterlings	x Pork, 25-lb. boxes	per lb.	4
	x Pork, 50-lb. boxes	per lb.	
Ears	x Pork, 25-lb. boxes	per lb.	3½
	x Pork, 50-lb. boxes	per lb.	
	Calf, froz.,scald., loose	per set	40
Feet	x Pork, 25-lb. boxes	per lb.	3
	x Pork, 50-lb. boxes	per lb.	
	x Lamb,large,25-lb.bxs	per lb.	28
Fries	x Lamb,small,25-lb.bxs	per lb.	27
	x Bull	per pair	5
Gall	Ox, loose	per gal.	30
	Calf,froz.scalded,loose	each	60
	Calf, skinned, loose	each	35
Heads	Lamb, skinned, loose	each	6
	Pork, loose	per lb.	5
	Pork, full cut, loose	per lb.	5½
Heads and Feet	Calf, loose	per set	1 00
	Beef, loose	per lb.	2
Hearts	Sheep, loose	per lb.	2
	Pork, loose	per lb.	2
	Pork, 25 lb. boxes, frozen		4
Jowls	Tongues in, loose	per lb.	7
	Tongues out, loose	per lb.	6
Kidneys	x Pork, 30 lb. boxes	per lb.	4
	Ox, unskinned, loose	per lb.	1½
Lips	x Pork, 50-lb. boxes	per lb.	3

stitution, except where orders specify "Do not substitute" in which cases will let item go short.

	Swift's Premium	Per lb.
Premium Hams	6 to 8 lbs. avg	31½
	8 to 10 lbs. avg	30½
	10 to 12 lbs. avg	30½
	12 to 14 lbs. avg	30½
	14 to 17 lbs. avg	30½
	17 to 20 lbs. avg	31½
	12 to 14 lbs. and up, 1c advance from Ft. Worth.	
Premium Skinned Hams	10 to 12 lbs. avg	33½
	12 to 14 lbs. avg	33½
	14 to 16 lbs. avg	33½
	16 to 18 lbs. avg	33½
	18 to 20 lbs. avg	33½
	22 to 24 lbs. avg	33½
	1c advance from Ft. Worth.	
Premium Bacon	4 to 6 lbs. avg., wide	41
	6 to 8 lbs.avg., wide	37½
	8 to 10 lbs. avg., wide	34
	10 to 12 lbs. avg., wide	32
	Squares, 3 to 4 lbs. avg	37½
	Squares, 4 to 5 lbs. avg	34
	Squares, 5 to 6 lbs. avg	32
	1c advance from Ft. Worth.	
Premium Bacon Sliced	CARTONS, 24—½-lb. net	40½
	CARTONS, 12—½-lb. net	41
	CARTONS, 12—1-lb. net	40½
	CARTONS, 6—1-lb. net	41
	GLASS JARS, 1 doz. to case, per doz	$3 60
	F. O. B. Ft. Worth, 10c per case advance. Premium sliced Bacon in cartons, shipment from Ft. Worth, ½c over list.	

Picnics	6 to 8 lbs. avg	13	...
	8 to 10 lbs. avg	12½	...
	10 to 12 lbs. avg	12	...
	12 to 14 lbs. avg	12	...
	Half skinned, ½c per lb. higher.		
	All skin off, 1c per lb. higher.		
Skinned Shoulders	8 to 10 lbs. avg	12½	out
	10 to 12 lbs. avg	12	out
	12 to 15 lbs. avg	12	...
	16 lbs. and over	12	...
	Roasts	14	...
	Skinned, neck bone in ½c less avg. shipped.		
	Skin on, neck bone out, ½c less avg. shipped.		
	Rough, skin on, neck bone in, ½c less avg. shipped.		
Spare Ribs		5	5
	From Ft. Worth, 1c advance.		
Trimmings	Extra Lean, fancy	11	10
	Regular	6½	6
Tenderloins	10-lb. pails, 6 to case	40	40
	From Ft. Worth, 1c advance.		
Leaf Lard	Not rendered	10	...
Clear Briskets	Range in wt. 1 to 2 lbs	9½	...
Bellies	4 to 6 lbs. avg	25½	...
	6 to 8 lbs. avg	25½	...
	8 to 10 lbs. avg	21½	...
	10 to 12 lbs. avg	18½	...
	14 to 16 lbs. avg	15	...
	18 to 20 lbs. avg	14½	...
	Rib in, ½c lb. less.		
	10 lbs. avg. and down	24½	...
	10 to 12 lbs. avg	24½	...

Livers	x Pork, 25-lb. boxes....per lb.	
	x Calf, fresh.....per lb.	27
	x Calf, froz. 22-lb. pails.per lb.	26
	x Veal, Frozen selected, 15-lb. pails (Chicago St. Paul, Milwaukee only).....per lb.	33
	x Veal, froz. selected, 30-lb pails (Shipments from all plants).....per lb.	30
	x Beef, 50-lb. boxes....per lb.	6½
	x Pork, 25-lb. bxs.....per lb.	2½
	x Lamb, 40-lb. boxes...per lb.	3
Lungs	Beef, loose..... (Chicago, St. Paul only).....per lb.	3
Melts	x Pork, 25-lb. boxes....per lb.	
	x Pork, 50-lb. boxes....per lb.	
	x Beef, 25-lb. boxes....per lb.	3
	x Beef, 50-lb. boxes....per lb.	
	x Sheep, 25-lb. boxes...per lb.	
	x Sheep, 50-lb. boxes...per lb.	
Palates	Ox (Chicago only) loose.per lb.	2
Plucks	x Calf.....each	60
	x Pork, 25-lb. boxes....per lb.	2½
	x Sheep, 25-lb. boxes...per lb.	3
	x Sheep, 50-lb. boxes...per lb.	
Skins	Pork, frozen only.....per lb.	4½
Snouts	x Pork, 25-lb. boxes....per lb.	4
	x Pork, 50-lb. boxes....per lb.	
	x Beef, frozen separately per lb.	38
	x Beef, in pails.....per lb.	24
	x Beef, Patty, froz only.per lb.	13
	Moulds about 1 lb. each	

	Empire Brand	
Empire Hams	6 to 8 lbs. avg.....	28½
	8 to 10 lbs. avg.....	27½
	10 to 12 lbs. avg.....	27½
	12 to 14 lbs. avg.....	27½
	14 to 16 lbs. avg.....	26½
	18 to 20 lbs. avg.....out	28½
Empire Skinned Hams	8 to 10 lbs. avg.....	29½
	12 to 16 lbs. avg.....	29½
	18 to 20 lbs. avg.....	29½
	22 to 24 lbs. avg.....	29½
	24 to 28 lbs. avg.....	28½
	28 to 32 lbs. avg.....	27½
	32 and over.....	27½
Empire Shoulder Cuts	N. Y. Cut Shoulders.....	16½
	N. Y. Cut Shoulders Skinned	16½
	Picnics, 3 to 5 lbs. avg....	17½
	Picnics, 5 to 6 lbs. avg....	17½
	Picnics, 6 to 8 lbs. avg....	16½
	Picnics, 8 to 10 lbs. avg....	15½
	Picnics, 10 to 12 lbs. avg....	15½
	Picnics, 12 to 14 lbs. avg...	14½
Rolled Empire Picnics	6 to 8 lbs. avg.....	17½
	8 to 10 lbs. avg.....	16½
	10 to 12 lbs. avg.....	16½
	Tied and partly boned, shank bone in.	
	Breakfast Bacon, Etc.	
Empire Breakfast Bacon	4 to 6 lbs. avg., wide.....	25½
	6 to 8 lbs. avg., wide.....	25½
	8 to 10 lbs. avg., wide.....	24½
	10 to 12 lbs. avg., wide.....	22
Empire Briskets	.....	15½
Winches-	Boneless.....out	

Hams	12 to 14 lbs. avg.....	24	...	
	14 to 16 lbs. avg.....	24	...	
	16 to 18 lbs. avg.....	24	...	
	18 to 20 lbs. avg.....	24	...	
	20 to 24 lbs. avg.....	24	...	
	24 lbs. and up.....	23	...	
Skinned Hams	10 to 12 lbs. avg.....	27	...	
	12 to 14 lbs. avg.....	27	...	
	14 to 16 lbs. avg.....	26½	...	
	16 to 20 lbs. avg.....	26½	...	
	20 to 24 lbs. avg.....	26	...	
	24 to 26 lbs. avg.....	26	...	
	26 to 30 lbs. avg.....	25	...	
Side Meats	Rough Ribs, 50-60 lbs.	14½	...	
	Rough Rib Backs, 30-40	15½	...	
Back Fat	10 to 12 lbs. avg.....	9½	...	
	14 to 16 lbs. avg.....	10	...	
	20 to 25 lbs. avg.....	12	...	
Neck Fat	Skinned, light.....	9½	...	
	.....	8	...	
	Skinned.....	8½	...	
Neck Bones	.....	2½	2½	
Back Bones	.....out	2	...	
Slip Bones	Pork, tails on.....out	5	...	
	Pork, tails off.....out	4	...	
	Pork, tails off, untrim.	6	...	
Knuckles	.....	4	...	
Hocks	½ to 1 lb.....out	10	10	out
	1 lb. to 2 lbs.....out	10	10	out
	2 lbs and over....out	9	9	out

Oxford English Style Bellies	See Basis Circular.

Sweetbreads	x Calf, selected in pairs frozen only; 6 to 8 oz. per pair	30
	8 to 10 oz. per pair	35
	10 to 12 oz. per pair	45
	12 to 14 oz. per pair	60
	14 to 16 oz. per pair	80
	16 oz. and over per pair	90
	x Calf regular, trimmed per lb.	37
	x Calf, Patty, froz. only per lb.	14
	Moulds about 1 lb. each	
	x Lamb. per lb.	34
	x Pork, 25-lb. boxes. per lb.	6
	x Pork, 50-lb. boxes. per lb.	
	From Ft. Worth ½c advance.	
Tails	x Ox, ¾ to 1 lb. per lb.	2½
	x Ox, 1 to 1½ lbs, frozen only. per lb.	3½
	x Ox, 1½ lbs. and over, frozen only. per lb.	8
Tongues	x Pork, 25-lb. boxes. per lb.	11
Weasand Meat	Pork, loose. per lb.	3

Winchester Bacon Backs	Ribs in	20
Winchester Breakfast Bacon	6-7 lbs. avg., Narrow	20
	12-14 lbs. avg., Wide	20
Clover Breakfast Bacon	7- 8 lbs. avg., Narrow	19½
	8-10 lbs. avg., Narrow	19
	14-17 lbs. avg., Wide	18½
	18-20 lbs. avg., Wide	18½
RADIO BACON		14½
DIXIE BACON SQUARES		14½
HUNGARIAN STYLE PAPRIKA BACON (Chicago only)		14½
SMOKED S. P. SPARE RIBS		out
SMOKED D. S. SPARE RIBS		out

Fancy Bacon Meats

Acorn Bacon Bellies	12 to 14 lbs. avg., wide or narrow	20
	14 to 17 lbs. avg., wide or narrow	18½
	18 to 20 lbs. avg., wide or narrow	18½
ACORN SQUARES		20

Country Style Squares	See Basis Circular.
VIRGINIA STYLE SMOKED JOWLS (tongues in)	out

Atlas Brand
Same boxing differential as No. 1 Meats.

Atlas Regular Hams	½c under same average Empire Regular Hams.
Atlas Skinned Hams	½c under same average Empire Skinned Hams.
Atlas Picnics	½c under same average Empire Picnics. (Ft. Worth only)

Gem and Franklin Brands
Same boxing differential as No. 1 Meats.

Gem Breakfast Bacon	Rough, 1c under same average Empire or Winchester Bacon.
Franklin Breakfast Bacon	Thin, limited 5c under same average Empire or Winchester Bacon.

Quotations are for goods F. O. B. cars, our Loading Docks, Kansas City, So. Omaha and St. Paul.
Cartage will be charged for any goods shipped by truck, local freight or express. Our responsibility ceases after goods are receipted for in good order by Transportation Company and we will not guarantee condition of shipments on arrival at destination.

ission's ibits Nos. 206, inc. erred to). 2471 EX. 199.

Omitted by stipulation.

EXHIBIT 200.

Ledger.

EXHIBITS 201 AND 202.

Stanaland ledgers.

200, 201 and 202 sent to U. S. Circuit Court with other physical exhibits.

203, 204, 205 and 206 omitted by stipulation.

2472 RESPONDENT'S EXHIBITS.

Federal Trade Commission
vs.
Swift & Company.

dent's bit No. 2473 RESPONDENT'S EX. No. 1.

SENATE.

66th Congress, 2d Session. Document No. 209.

SOUTHERN LIVE-STOCK PRICES.

Letter From the Chairman of the Federal Trade Commission Transmitting, in Response to a Senate Resolution of July 25, 1919, a Communication Submitting a Report on Southern Live-Stock Prices.

February 2 (calendar day, February 3), 1920.—Referred to the Committee on Agriculture and Forestry and ordered to be printed.

Federal Trade Commission,
Washington, February 2, 1920.

Sir: By the direction of the commission, I am transmitting herewith, pursuant to a resolution of the Senate adopted July

25, 1919, the report of the Federal Trade Commission on southern live-stock prices.

Very truly, yours,
VICTOR MURDOCK,
Chairman.

The President of the Senate,
Washington, D. C.

Report of Federal Trade Commission on Southern Live-Stock Prices.

(Response to Senate resolution 133, Sixty-sixth Congress.)
To the President of the Senate:

The comission submits herewith its report on an examination of southern live-stock prices and marketing conditions, made pursuant to the following resolution adopted by the Senate July 25, 1919:[1]

Resolved, That the Federal Trade Commission be, and it is hereby, directed to made an immediate investigation of the methods of purchase and prices paid for cattle and swine by persons and corporations engaged in the meat-packing industry, with particular reference to the discriminations, if any, operating to the disadvantage of live-stock producers in the Southern States, and to report as soon as practicable to the Senate the results of such investigation.

To determine whether or not producers of live stock in the Southern States were being discriminated against the commission considered it especially pertinent (1) to compare cattle and hog prices paid in the Southern States with prices paid in the Northern and Western States; (2) to compare prices received for southern beef and pork products with the prices received for northern and western products; (3) to compare the quality of such southern products with similar classes of northern and western products; and (4) to compare live-stock production and marketing methods in the South with those obtaining in the North and West.

A survey soon showed that regardless of the particular circumstances which gave rise to the question of discrimination, cattle could not properly be involved in the complaint nor could all sections of the Southern States with respect to hogs. Although there is no uniform system of classifying and grading cattle, and it was not, therefore, possible to compare either

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[1]Senate resolution 133, 66th Cong., 1st sess.

southern cattle or beef prices with northern and western prices, nothing was found that would appear to involve cattle in the complaint of discrimination. The methods of purchase and the prices paid for cattle in the South, both by large and small packers, apparently are not essentially different from the methods and prices obtaining in other regions.

It was apparent that, while in most of the Southern States, the methods of purchase and prices paid for hogs were more or less like those prevailing in other parts of the country, in a certain section of the Southern States the prices paid for hogs during the year ending July, 1919, were considerably lower than in the North and West. The region in which hog prices were found to be lower was practically identical with the section of the Southern States which produces a preponderance of soft and oily pork, namely, the northern part of Florida and the southern parts of Georgia and Alabama. It was in this section, it may be assumed, that the demand for this inquiry had its origin.

It seemed necessary, therefore, in answering the inquiry of the Senate to confine the report particularly to conditions surrounding the hog-raising industry in that section of the Southern States which produces soft and oily pork.

Soft and oily pork, it was found, has a lower market value than firm pork and is actually sold at a differential below the firm product. The question, therefore, is whether or not the meat packers who purchase these hogs which produce soft and oily pork at a differential under the price paid for hogs which produce firm pork also sell the products derived from these lower-priced animals at a corresponding differential.

Accounting records inadequate to follow killing lots.—In order to determine this, an effort was made to ascertain the total net amounts received from all cuts and by-products on certain killing lots of hogs purchased in each section, and to compare these selling results with the actual prices paid for the live hogs from which these products were derived. It was found that in no case would the packer's accounting records enable this to be done.

The various cuts of the hog carcasses, it was found, go to different plant departments and are handled or processed differently. Some of the processes, like the dry salt and sweet pickle cure, require several months. The various products are disposed of at different times and in different ways so that the identity of any given killing lot of hogs is so dispersed on the packers' records as to make it impossible to segregate

and correlate the amounts paid for any certain lot of live hogs and the amounts received from the products derived therefrom.

2474 Quality differentials in price of live hogs and of products therefrom.—A study was then made to ascertain whether the same relation existed between the prices received for various soft and oily pork products and for similar firm pork products as existed in the prices paid for the hogs producing the soft and oily pork and the hogs producing the firm products. It was found, however, that the hogs marketed in this southern section are not finished or graded similarly to those in the North and West, and, at best, comparisons could only serve to indicate the general relation between the two differentials and could not provide definite means of determining the question of discrimination.

The prices paid for soft and oily hogs marketed in Florida, Georgia, and Alabama during different periods of the year ending July, 1919, compared with prices paid at the larger markets of the North and West for identical periods and for the most nearly comparable grades, showed that producers in this section of the South received prices ranging in the different months from an average of about one and one-half dollars to an average of about four and one-half dollars per hundredweight lower than the prices received for firm hogs in the larger markets of the North and West.

These wide variations in the differentials were found to correspond to the wide variations in the quantities of hogs marketed in this part of the South during different periods of the year. The larger price differences occurred during the winter months when the bulk of the hogs were marketed and the smaller price differences during the summer months when comparatively few hogs were sold for slaughter.

To determine, in a general way, whether or not these differences between live hog prices in the different sections were reflected in prices received for the various products, examinations were made of the sales records, covering different periods of the year, of practically all of the interstate meat packers operating plants in the Southern States and of some of the packers in other sections of the country.

Actual prices received for the various cuts of fresh pork and for cured and smoked products derived from hogs produced in the soft and oily hog region of the South were compared with actual prices received for northern and western products. This comparison of a part of the packers' sales

records extended over different periods and over different markets of the South and North.

Special attention was given to the sales records of the larger packers slaughtering hogs, both in Florida, Georgia, and Alabama and in the North and West, and of certain smaller packers of the North who at times purchase hogs from these Southern States.

Such sale prices as were examined and found fairly comparable indicate that the bulk of soft and oily pork products invariably were sold at prices ranging from one to five dollars per hundredweight under northern and western products most similar thereto, the differences being less on fresh pork and greatest on cured and smoked products. These differences occurred with conspicuous uniformity wherever soft and oily products from this southern section were sold, regardless of the particular packers or distributors who hanhled them.

The quality of the products appears, therefore, to be the chief cause for the lower prices paid for hogs in the specified regions of Florida, Georgia, and Alabama. From the best study that could be made of the various accounting records it appears that the lower prices which these producers receive for their hogs are due not to discrimination but rather to the fact that the great majority of their hogs produce soft and oily pork products, which must be sold in a restricted market and at prices substantially lower than the prices paid for standard firm pork.

Other factors in price differentials.—In addition to quality, there are other more or less important price factors applying to hogs in this section. Among these may be mentioned the following: (1) The average weight of hogs marketed in this southern section is considerably less than the average weight of hogs marketed in the North and West, (2) these southern hogs are not so well finished as are hogs in other regions and their dressed meat yield is less, (3) soft and oily pork from these hogs can not be handled as economically as firm pork, and (4) there is a great variation in the supply and demand conditions in the markets of the Southern States.

While apparently all of the packers recognize these various price factors, some of them ascribe part of the total differential between southern and northern hog prices to a transportation differential based on freight rates and other charges involved in shipping hogs from these Southern States to northern markets. The fact is that as a general rule hogs

from the parts of Florida, Georgia, and Alabama under discussion are slaughtered and consumed in the South and are not shipped to the northern markets. In view of this fact it does not appear proper to ascribe any of the total differential to transportation.

Before discussing in detail the quality of products and other price factors it is important to show the development which has taken place in hog raising in the South and to outline the methods used in marketing hogs.

Production and Marketing of Hogs in Florida, Georgia, and Alabama.

Production.—Raising hogs for marketing is a comparatively new industry in the southeastern States, especially in Florida, Mississippi, Alabama, and Georgia. While there has been a general increase in hog production in the entire South during the past 10 years, the increase has been most rapid in these four States during the past five years. According to figures published by the Department of Agriculture, the increase in these States appears as follows:

Number of swine on farms Jan. 1.

	1910	1915	1919	Percentage of increase 1919 over 1910
Florida	810,000	949,000	1,512,000	86.7
Mississippi	1,292,000	1,540,000	2,282,000	76.6
Alabama	1,267,000	1,559,000	2,223,000	75.5
Georgia	1,784,000	2,042,000	3,043,000	70.6

For many years previously farmers in this section of the South produced cotton almost exclusively, and gave little attention to hog raising. Generally, only a few hogs
2475 were raised for home slaughter and to supply part of the demands of small local butchers. With the rapid spread of the cotton boll weevil, threatening to destroy the cotton crop in these States, the United States Department of Agriculture began encouraging the raising of hogs for marketing. The farmers generally responded, with the result that hog production has suddenly become an important industry in this section of the South. Although there are still certain production and marketing difficulties surrounding the industry, largely on account of its being new to these farmers,

there are many indications that these southern producers have found hog raising profitable and that they will continue rapidly to expand the industry during the next few years.

When the farmers of these States turned suddenly to hog raising on a large scale most of them were confronted with a number of problems, apparently due to the fact that they attempted to measure the success of their new industry by the better standards and attainments of hog raisers in the North and West. For years the people of the South have depended mainly on the northern and western packers for their supply of pork. The bulk of the pork products consumed in the South are still products that are shipped in and distributed mainly through the branch houses and car routes of the large packers. These products were from a corn-belt type of hog that was the result of years of tested methods of breeding, feeding, and marketing, and this type commanded the highest market price. Against this northern standard of production farmers in Florida, Georgia, and Alabama, with an inferior type of hog and with less experience, either in feeding or marketing, were compelled to compete.

While many of these farmers have for years produced well-bred hogs, by far the greatest proportion of their hogs from which the new industry had to be built were inferior to the breeding stock of the corn belt. Rapid progress in the effort to improve their breed of hogs has been made during the past few years, and there is still a large demand in these southern States for the best breeding stock from the northern and western States. During the past year many carloads of thoroughbred hogs from the corn belt were distributed among the farmers in this southern section.

Methods of feeding.—Not only did these farmers begin their new hog-marketing industry with a type of hog inferior to the northern and western type, but they began without full knowledge of the improved methods of feeding and finishing hogs for market.

Simultaneously with the expansion of their hog-raising industry the farmers in Florida, Georgia, and Alabama began growing the Spanish peanut on a large scale as one of their principal crop feeds for hogs. Other grazing crops, such as cowpeas, velvet beans, sweet potatoes, and various tame grasses, are also used, but apparently not so extensively as peanuts.

Figures from the Department of Agriculture show that the peanut acreage in these States has increased from 1916 to 1919 as follows:

	1916	1917	1918	1919
	Acres.	Acres.	Acres.	Acres.
Florida	10,000	58,000	153,000	145,000
Georgia	40,000	255,000	362,000	297,000
Alabama	300,000	540,000	747,000	530,000

The peanut crop, maturing during the fall months, is extensively used in these three States to fatten and finish hogs for market. In most cases the hogs are turned into peanut pastures to graze or harvest the crop. While this system of grazing hogs on peanut pasture appears to be a popular method of hog feeding, it results in a production of hogs that make soft and oily pork.

While hog production has increased as rapidly in Mississippi as in Florida, Georgia, and Alabama, it is significant that the peanut crop acreage in this State is comparatively small and that there is apparently a correspondingly small quantity of soft and oily hogs produced.

Although the farmers in the region of the South under review are apparently rapidly improving their hog-feeding methods, and are producing a type of higher market value, they still produce a preponderance of soft and oily hogs. They are to a great extent still following a method of feeding described by one of the agricultural county agents, as follows:

"Too many of our farmers turn their young pigs into the pine woods where for several months, little or no other food is provided than that which the pigs may find in the woods. These pigs are thus improperly nourished during the growing period, and when, at the age of about 6 months, they are turned into the peanut pastures they are stunted and very much under weight. These pigs, at the age of 6 months, often weigh no more than 50 pounds apiece, when they are put into the peanut fields where they grow and fatten rapidly. From the peanut pastures, usually without any other finishing feed, they are sent to market and of course, produce soft and oily meat."

The whole question of hog feeding in the States producing hogs that make soft and oily pork is now being studied by the Department of Agriculture and some of the Southern State agricultural colleges to determine what feeding systems will produce desirable hogs most economically. It can be assumed that these agencies will be able to determine the extent to which peanuts can be advantageously used as a finishing feed for hogs.

Methods of marketing.—The most advantageous methods of selling or shipping their hogs were not used by the farmers of these Southern States when they began producing hogs for market. Previous to the establishment of modern packing plants in these States the local retail butchers provided about the only market for live hogs. This limited outlet not only afforded no incentive to larger production, but it did not require the marketing methods and facilities such as have been developed in the older hog-raising sections of the North and West.

It was at this early stage of the development of the industry that local dealers or country shippers began buying farmers' hogs for shipment to market. This method of selling was readily adopted by most of the farmers because of its convenience and the fact that farmers seemingly preferred to avoid the risk that must be assumed in shipping directly to a distant market. These dealers or shippers continued to purchase directly most of the hogs raised for market until 1917, when the extension-work officials of the Department of Agriculture and the agricultural colleges in some of the Southern States, working through the county agents, began introducing the cooperative hog sale.

The cooperative sales are conducted usually in the following manner: A county agent or some authorized State agent notifies the farmers in a certain community that 2476 at a certain time and place a hog sale will be held. Farmers bring their hogs to this place, where the animals are classified and graded in lots that will sell to the best advantage. Agents of the packers and other buyers usually attend these sales and purchase the hogs thus offered.

The farmers generally took advantage of this new method, believing it to be an economical and satisfactory marketing arrangement. In some sections of the South the cooperative sale has now become the principal means by which the farmers dispose of their hogs.

The cooperative sales have in some States of the South developed into cooperative shipping associations which ship the live stock of their members directly to markets. Cooperative shipping associations in the South are most numerous in Alabama and Mississippi.

There are two other methods by which a small part of the live stock raised in this southern section is sold, namely, by direct shipment to the large slaughtering or packing plants, and through public stock yards. The former method applies particularly to the communities near the packing plants.

Important stockyards markets in the southeastern States where live stock is bought and sold are at Montgomery, Ala., and at Jacksonville, Fla. The Montgomery yards, although recently established, is patronized both by producers and buyers, and promises to become a large outlet for live stock in that section of the South. The Jacksonville yards are owned by Armour & Co., and its local packing plant purchases practically all of the live stock that comes to this market.

Development of packing plants.—Simultaneously with the recent development of the live stock industry in the southeastern States, several modern packing plants were established. The records of the Bureau of Animal Industry, July 25, 1919, show that the following slaughtering and packing plants are operating in these States under its inspection, all of which, except the Birmingham Packing Co., have been established within the past five or six years:

Swift & Co., Andalusia, Ala.
Birmingham Packing Co., Birmingham, Ala.
A. D. Davis Packing Co., Mobile, Ala.
Swift & Co., Moultrie, Ga.
Macon Packing Co. (Allied Packers), Macon, Ga.
Armour & Co., Tifton, Ga.
Augusta Packing Co., Augusta, Ga.
Armour & Co., Jacksonville, Fla.
Chipley Packing Co., Chipley, Fla.
Mississippi Packing Co. (Wilson & Co. (Inc.)), Natchez, Miss.

In this connection it may be noted also that packing plants have also been established during this period in the following places:

Natchez Dressed Beef Co., Natchez, Miss.
Capefear Packing Co., Wilmington, N. C.
Carolina Packing Co., Wilmington, N. C.
Butchers' Abattoir Co., North Augusta, S. C.

Three other interstate plants recently established in the States referred to above have since been closed, namely the Orangeburg Packing Co., Orangeburg, S. C.; the Statesboro Packing Co., Statesboro, Ga.; and the Waycross Packing Co., Waycross, Ga. The Orangeburg plant, costing $250,000, was opened in February, 1918, and closed down early in 1919, when it passed into the hands of a receiver. The plant at Statesboro, built in 1917 at a cost of about $140,000, was operated only about a year. The Waycross plant, built about the same time, ceased to operate in August, 1918. These three companies were organized by local capital.

Of the above plants now operating, the ones at Birmingham, Andalusia, Macon, Tifton, Moultrie, Jacksonville, Chipley, and the Wilson & Co. plant at Natchez purchase the bulk of the hogs in the soft and oily pork producing sections of the South. These eight plants, except the one at Jacksonville, were established by local enterprise and, for a time, operated independently of the large packers. Later, four were acquired by some of the Big Five packers, and about a year ago the Macon plant was sold to the Allied Packers, (Inc.).

Review of Price Factors.

Short marketing period.—One of the principal problems in connection with the new hog industry in this section of the South arises from the fact that the bulk of the year's production is marketed within a short winter period, while at other times of the year comparatively few hogs are available for slaughter. This does not make for a good or a steady market.

The following table, giving the monthly total of hogs slaughtered at three southern plants and two northern plants for the year ending July, 1919, indicates the extent to which the winter market in the soft and oily hog section is crowded with hogs, as compared with more even marketing at these two northern plants.

	Jacksonville, Fla. (Armour)	Moultrie, Ga. (Swift).	Andalusia, Ala. (Swift).	St. Joseph Mo. (Swift).	Sioux City, Iowa (Armour).
August, 1918	338	2,543	2,590	56,920	44,053
September	689	2,773	2,643	54,100	36,814
October	3,589	3,771	3,725	90,113	43,493
November	8,363	10,796	4,118	92,391	57,367
December	12,159	15,493	9,354	112,827	87,504
January, 1919	15,400	19,079	13,477	165,014	90,677
February	5,039	13,670	8,906	98,700	82,611
March	5,983	13,743	7,044	51,192	57,760
April	2,168	9,130	7,098	71,231	58,720
May	1,162	3,383	3,956	58,221	66,907
June	1,229	1,624	2,153	83,269	71,734
July	421	1,442	2,073	72,645	57,538
Totals	56,540	97,447	67,137	1,006,623	755,178
November to March, inclusive	46,944	72,781	42,899	520,124	375,919
Percentage of whole year	83	75	64	52	50

It will be seen, that at the three southern plants about 51 per cent of the hogs slaughtered during the entire year were slaughtered during the three months, December, January, and February, and 73 per cent during the five months from November to March, inclusive.

There were times within this period when the hogs marketed in these Southeastern States exceeded the slaughtering capacity of the local packing plants. An adequate supply of hogs of a more desirable quality in other parts of the country at this time practically precluded the possibility of an advantageous market outlet beyond this southern section. During January, 1919, there were days when some of these southern plants with their pens filled with surplus hogs, were apparently compelled to withdraw from the market. It was during this month, when there was quite a general glut in the southern markets, that the greatest differences occurred between these southern hog prices and northern hog prices.

2477 Weights and finish.—Hogs produced in the corn belt are generally marketed in a finished condition and at such weights as best meet the demands of the market and bring the highest prices. The southern hogs under discussion are not so well fattened or finished as those marketed in the larger hog-raising sections of the North and West. The systems of feeding still common among the cotton-belt farmers also result in the production of hogs that yield a lower percentage of carcass meat than Northern and Western corn-fed hogs. The average live weight of hogs marketed in Florida, Georgia, and Alabama is considerably less than the average weight of hogs marketed in the North and West. Data from typical Northern and southern plants indicate that the corn-belt hogs during the past year were marketed at an average weight of over 50 pounds greater than those received at plants in the South. It is claimed that the lighter Southern hogs do not meet the demands of the general market in this respect. These differences in the finish, carcass yield, and weights of Northern and Southern hogs apparently account for a part of the lower prices paid for hogs in these Southern markets.

Premiums for firm hogs.—There are indications that the packers who purchase hogs in Florida, Georgia, and Alabama are encouraging the production of a type that will compete on an equal basis with the corn-belt type. Most of these packers during the past year paid, and it is understood expect to continue to pay, a premium of $2 or more per hundred pounds for certain sized lots of hogs that chill out hard.

In some cases, hogs are purchased as "guaranteed firm," in which instances higher prices, usually $2 or $3 per hundred pounds, are paid, with the understanding that a refund will be made to the buyers of such hogs as fail to chill out firm. During February and March, 1919, the Cincinnati Abbatoir Co., for instance, bought 65 car lots of hogs at the Montgonery, Ala., stock yards, through a large order buyer. A part of these were purchased as soft and oily hogs at prices ranging from $11 to $13.50 per hundred pounds. The rest were purchased as "guaranteed firm," at prices about $3 per hundred pounds above the soft and oily prices. It appears from the records examined that a portion of the hogs guaranteed firm and purchased as such chilled out soft and oily, and that on this account refunds totaling over $1,800 were made at the rate of $3 per hundred pounds by the order buyer. The order buyer in turn collected the refund amounts from the producers from whom the guaranteed hogs were purchased.

Considerable dissatisfaction appears to have arisen, in many cases, from the fact that farmers who had adopted methods that enabled them to market firmer and better hogs were nevertheless compelled during the year to sell these animals at the prices for soft and oily hogs. However, the packers claim that it is unprofitable for them to handle small lots of these better hogs and the products therefrom separately, when the bulk of hogs slaughtered is soft and oily. Some packers, therefore, have not paid premiums on such small lots, although a few have paid premiums on larger lots in order to stimulate firm pork production. This situation has given rise to considerable complaint among hog growers and shippers, but it is not likely that these conditions will be entirely removed until there is a larger proportional production of firm hogs in this section of the South.

Quality of product. A number of the differences between the hogs of these two sections, accounting for a part of the differences in prices, have already been pointed out. The principal cause of the price difference, however, as pointed out above, appears to be due to the soft and oily quality of the pork products in the section of the South under discussion.

It is generally conceded that standard pork products of the highest market value are derived from hogs produced in the States of the Middle West. These corn-fed hogs produce pork that is firm and of a quality that apparently meets the demands of the trade, while in Florida, Georgia, and Alaba-

ma it was found that the largest proportion of the hogs sold for slaughter produced soft and oily pork products. These products are generally sold at varying discounts under standard firm products, and therefore the hogs that produce these soft and oily products are purchased at lower prices than can be paid for firm hogs.

According to packers, wholesale and retail distributors, and others experienced in handling soft and oily pork products, the following points appear to be regarded as the principal objections to them, and as determining their lower market value.

1. Soft and oily hog carcasses can not be chilled firm and therefore can not be cut and handled as economically as firm carcasses.

2. Soft and oily pork products are less attractive in appearance than firm products, and therefore do not sell as readily to retailers and consumers.

3. The proportion of by-products, such as livers, hearts, kidneys, and casings condemned from soft and oily hogs, is greater than from the firm hogs of the North. This claim that the percentage of condemnation of these by-products is greater in the southern plants than in the North is supported by the statistics of the Bureau of Animal Industry, appearing in the form of special reports made to the chief of the bureau by various plant inspectors. From these reports the following table is compiled showing the percentages of condemnations of hearts, livers, kidneys, and casings at certain northern plants, compared with certain southern plants:

	Percentage Condemned			
	Livers.	Hearts.	Kidneys.	Casings.
Northern Plants.				
Wilson & Co. (Inc.), Chicago, Ill.	9	[1]	3.72	4.55
Swift & Co., South St. Joseph, Mo.	10	1	4	2
Armour & Co., Sioux City, Iowa	.....	6.33	7.5	5
Averages	9.5	3.66	5.07	3.85
Southern Plants.				
Mississippi Packing Co., Natchez, Miss	75	3	75	5
Swift & Co., Andalusia, Ala.	90	1	95	8
Birmingham Packing Co., Birmingham, Ala.	53.3	0	50	45
Macon Packing Co., Macon, Ga.	80	15	[2]45	[2]15
Swift & Co., Moultrie, Ga.	87½	8	68½	8
Chipley Packing Co., Chipley, Fla.	80	0	[3]100	[3]100
Armour & Co., Jacksonville, Fla.	95	0	95	50
Averages	80.1	3.85	75.4	33

[1]No record.
[2]Estimated.
[3]For lack of handling facilities and for lack of market the Chipley plant does not attempt to save any kidneys and casings.

2478 4. Soft and oily pork products shrink more in cure and storage than do firm products. While it is generally claimed than in handling, curing, and storing, of soft and oily products the shrink is excessive, the commission was unable to secure the results of any authoritative tests to determine this question. It is understood that such tests are now being made by the Department of Agriculture, the results of which will doubtless be published by that department.

5. Lard derived from soft and oily hogs does not harden like lard from firm hogs, and generally sells from 1 to 2 cents per pound under the northern product. To enhance its market value this southern lard requires the addition of hog stearin or it must be mixed with about equal parts of firm lard. Obviously either treatment adds to its cost.

6. The market for such firm pork as is produced in the corn belt and has long been considered standard product is world-wide, while the market for soft and oily pork is greatly restricted. This claim is amply substantiated by the commission's findings. Soft and oily products are excluded from the Chicago Board of Trade and are not purchased by the Army or Navy nor by export buyers. The markets of the

North and West provide only a limited outlet for these products. Even in the North, where most of the soft and oily pork is consumed, it generally does not sell as readily, even at lower prices, as does the firmer standard products shipped in from the North and West.

Improvement in Methods of Hog Production.

While at present the great majority of the hogs raised for market in the specified regions of Florida, Georgia, and Alabama produce soft and oily pork products, having a lower market value than firm pork, there are indications that the farmers in this section are adopting methods of breeding and feeding that are enabling them to produce hogs of a better quality. Not only are these farmers improving their methods of breeding and feeding, but they are adopting rapidly through cooperative sales and shipping associations, more advantageous ways of marketing their hogs. The United States Department of Agriculture and some of the Southern State agricultural colleges are aiding greatly in bringing about these improvements. General adoption of these better methods of production and an extension of the periods of marketing hogs more evenly over the year should result, it would appear, in greatly reducing the live-hog differentials now obtaining in this section of the South and would thereby tend to remedy the conditions upon which the present complaint is founded.

VICTOR MURDOCK, *Chairman.*
HUSTON THOMPSON.
WILLIAM B. COLVER.

February 2, 1920.

2479 RESPONDENT'S EXHIBIT No. 2.

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of).

A press summary released for use on July 12, 1921, by the Bureau of the Census, Department of Commerce, covering Livestock and Livestock Products in the State of Georgia.

Among other things, it shows the preliminary figures from the Census of Agriculture for Georgia as of January 1, 1920.

2,071,051 Swine in the State of Georgia.
1,034,173 Pigs under six months old.
363,729 Sows and Gilts for breeding.
30,170 Boars for breeding.
642,979 all other hogs.
The reported value for Swine was $20,559,953.00.

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ibit No. 2480 RESP. EX. 3

LIVE STOCK SLAUGHTERED BY YEARS.
MOULTRIE, GA. PLANT.

1917	CATTLE	HOGS
(July through December)	2,573	26,556
1918	18,008	72,666
1919	10,381	103,099
1920	8,578	65,281
1921	3,626	36,080

(January through June)
Docket 453
July 15, 1921
Witness Smith
Reporter McRae

2481 RESPONDENT'S EXHIBIT No. 4 Respondent Exhibit 4.

is eleven statements showing the weekly statement of E. N. Wood, Birmingham, Alabama, with Moultrie Packing Company, Moultrie, Ga., as follows:

1/10/17—Commissions, December, 1916.

102#	Fresh @ ½	.51	
160.77	Cured @ 2½%	4.02	
		4.53	
12/9/16	Inv.	2.37	
		2.16	

2/10/17—Commissions, January, 1917.

96.06	Cured @ 2½%	2.40	

3/6/17—Commissions, February, 1917.

1543.23	Cured @ 2½%	38.68	

3/31/17—Commissions, March, 1917

50#	Sausage @ 1c per lb.	.50	
3497.41	Cured @ 2½%	87.44	
		87.94	

4/30/17—Commissions, April, 1917

15#	Sausage @ 1c	.15	
7775.06	Cured @ 2½%	194.38	
		194.53	

6/8/17—Commissions, May, 1917

182#	Sausage @ 1c	1.82	
87#	Fresh @ ½c	.43	
7012.00	Cured @ 2½%	175.30	
72.53	" April @ 2½%	1.81	179.36
	Overs to pay drayage		6.50
			185.86

2482

7 /7 /17—Commissions, June, 1917.

335#	Sausage	@	1c lb.	3.35	
4459.39	Cured	@	2½%	111.48	
					114.83
	Drayage				1.50
					116.33

Voucher 95 Commissions, July, 1917.

54#	Sausage	@	1c lb.	.54	
1423.24	Cured	@	2½%	35.58	36.12

8 /15 /17—Commissions, Aug. 1-15, 1917.

199.55	Cured		2½%	5.00

9 /20 /17—Commission Account for Sept. 1st to 16th,

171.73—	Cured		2½%	4.29	
	50c Average Left off			.50	
				4.79	

10 /3 /17—Commission account from Sept. 16th to Oct. 1

1,132.23	Cured		2%	22.64

2483 RESPONDENT'S EXHIBIT No. 5. Respon Exhi 5.

is 19 statements showing the weekly statement of M. M. Stanaland, Atlanta, Ga., with Moultrie Packing Company, Moultrie, Georgia, as follows:

7/7/17—Commissions, June, 1917.			
50# Sausage @ 1c lb.		.50	
23153# Fresh @ 1½c		115.76	
12881.90 Cured @ 2½%		322.05	438.31
83099# @ 6c drayage		49.86	49.86
Ice & Storage			
			488.17
Telegrams			2.58
			485.59
12/10/16—Commissions, November, 1916.			
Fresh 92480# ½c lb.		462.40	
Cured 14215.35 @ 2½%		355.38	817.78
Ice and Storage 184386# @ 6c			110.63
			928.41
11/11/16—Commissions, October, 1916.			
59030# Fresh @ ½c		295.15	
5057.05 Cured @ 2½%		126.43	
		421.58	
Ice and Storage			
91022# Meat		54.61	476.19
4/30/17—Commissions, April, 1917			
114041# Fresh @ ½c		570.20	
20164.61 Cured @ 2½%		504.11	
		1074.31	
213244 @ 6c		127.94	1202.25
Telegrams			2.78
			1199.47
3/31/17—Commissions, March, 1917			
130345# Fresh @ ½c		651.72	
16119.77 Cured @ 2½%		402.99	
		1054.71	
223137# @ 6c		133.88	1188.59
Telegrams			5.33
			1183.26

This does not include the last day of Mch.
* taken in April account.

2484

9/15/16—Commissions

Fr. Meat 19887# @ ½c	99.44	
Cured " 4854.77 @ 2½	121.37	
Icing for 51490# @ 6c Cwt.	30.89	
	251.70	

1/10/17—Commissions, December, 1916

164# Sausage @ 1c	1.64	
117785# Fresh @ ½c	588.92	
5305.21 Cured @ 2½%	132.63	
	723.19	
Ice & Storage		
147333# @ 6c	88.40	
		811.59

8/1/16—

Fr. Meat Sales, July 10902# @ ½c	54.51	
Cured " " " 3681.88 @ 2½c	92.04	
Icing, Storage & Drayage 37850# @ 6c Cwt	22.71	
	169.26	

6/8/11—Commissions, May, 1917

920# Sausage @ 1c	9.20	
67830 Fresh @ ½c	339.15	
16605.40 Cured @ 2½%	415.13	
	763.48	
150225# @ 6c	90.13	
		853.61
Telegrams		3.32
		850.29

6/30/16

Cured Meat 482280 @ 2½	120.57	
	56.66	
	177.23	
	27.47	
	204.66	

2/10/17—Commissions, January, 1917

121083# Fresh @ ½c	605.41	
6610.21 Cured @ 2½%	165.26	770.67
164013# Ice & Storage @ 6c		98.40
		869.07
		4.53
		864.54

2485

3/6/17—Commissions, Feby, 1917.

114294#	Fresh @ ½c lb.	571.47	
25#	Sausage @ 1c	.25	
11175.81	Cured @ 2½%	279.40	
		851.12	
181166#	Ice & Storage @ 6c	108.69	
			959.81
	Telegrams		4.17
			955.64
Lard Contracts—R. I. Barge		2.25	
	Kelley Bros. Co.	5.48	
	J. T. Bell	.85	
	L. L. McGahee	.95	
	Nickajack Milling & G.	1.50	
	Weeks Bros.	.23	
			11.26
			944.38
10/2/16			
Sausage 14# @ 1c		.14	
Fresh Meat 18149 @ ½		90.75	
Cured Meat 3677.56 @ 2½		91.94	
Icing & Storage 42593# @ 6c		25.56	208.39
Returned from City of Atlanta		9.37	
L. W. Rogers 374.89 @ 2½		1.28	
" " " 2135# @ 6c		1.28	
		10.65	
	Balance		197.74
6/1/16—May Sales			
41800#	Fresh @ ½c	209.00	
10,955.48	Cured 2½%	274.88	
			483.88
Icing & Drayage 127451# 6c			76.47
			$560.35
Telegrams Dec. to June 1			20.78
			$539.57
3/11/16—Commission Account, February, 1916.			
Sausage 297# @ 1c per lb		2.97	
Fresh Meat 86097# @ ½c		430.48	
Cured Meat 5168.64 @ 2½%		129.22	
			562.67
Icing and Drayage 136585# @ 6c			81.95
			$644.62

2486

12/10/15—Commissions, November, 1915

Sausage 322# @ 1c lb.	3.22	
Pig Feet 991# @ ½c	4.95	
Fresh Meat 38282# @ ½c	191.41	
Cured Meat 469.73 @ 2½%	11.73	
		211.31

Aycock & Stanaland, Commissions, Jan. 1916.

Sausage 345# @ 1c	3.45	
Pig Feet 15# @ ½c	.07	
Fresh Meat 79149# @ ½c	395.75	
Cured Meat 4377.41 @ 2½%	109.44	508.71
Icing & Drayage 192314# @ 6c		115.39
		624.10
2/7 Check		300.00
		324.10

1/10/16—Commissions, Dec., 1915.

Sausage, 467# @ 1c lb.	4.67	
Pig Feet 452# @ ½c	2.26	
Fresh Meat 53626# @ ½c	268.13	
Cured Meat 1073.10 @ 2½%	26.83	301.89
November Telegraph Acct.	2.65	
December " "	1.82	4.47
		297.42

4/7/16—Commission Acct., March, 1916.

Sausage 322# @ 1c	3.22	
Pig Feet 135# @ ½c	.67	
Fresh Meat 76643# @ ½c	383.21	
Cured Meat 6413.11 @ 2½%	160.33	547.43
Icing & Drayage 143229# @ 6c		85.94
		633.37

5/1/16—April Sales

64#	Sausage @ 1c	.64
89294#	Fresh Meat ½c	446.47
$19,682.09	Cured 2½%	492.05
		939.16

2187 **RESPONDENT'S EXHIBIT #6** Respond Exhibit 6.

is 21 statements showing the weekly statement of Sam T. Smith, Jacksonville, Fla., with the Moultrie Packing Company, Moultrie, Ga., as follows:

7/7/17—Commissions, June, 1917

658#	Sausage @ 1c	6.58	
21097#	Fresh @ ½c	105.48	
4519.38	Cured @ 2½%	112.98	225.04

8/10/16—Commission Acct., July, 1916

Sausage	739# @ 1c	7.39	
Pig Feet	20# @ ½c	.10	
Fresh	9212# @ ½c	46.06	
Cured	2596.59 @ 2½%	64.91	
			118.46
Past Due Accounts			
	Eighth St. Mkt.	29.70	
	F. J. George	46.07	
	C. T. Moody	50.06	
	Riverside Cash Mkt.	340.42	
		466.25	
	2% On		11.66
			106.80

12/10/16—Commissions, November, 1916

Sausage	1620# @ 1c	16.20	
Pig Feet	831# @ ½c	8.31	
Fresh	59921# @ ½c	299.60	
Cured	1798.46 @ 2½%	44.96	
			369.07

9/5/16—

Sausage 450# @ 1c		4.50	
Fresh Meat 7787# @ ½		38.94	
Cured Meat 2830.66 @ 2½		70.77	
			114.21

3/6/17—Commissions, Feby., 1917

68720#	Fresh @ ½c	343.60	
782#	Sausage @ 1c	7.82	
625#	Pig Feet @ ½c	3.12	
$2558.51	Cured @ 2½%	63.96	418.50
Past Due Accounts.			
	B. A. Patten	52.08	
	Mike Toney	25.00	
	A. E. Goss	19.77	
	H. F. Coffey	18.51	
	United Cash Mkt.	97.41	
		212.77	
	2½%		5.32
			$413.18

2488

10/2/16—			
Sausage	303# @ 1c	3.03	
Fr. Meat	13453# @ ½	67.27	
Cured	$2019.82 @ 2½%	50.50	
			120.80
1/10/17—Commissions, Dec., 1916.			
1129#	Sausage @ 1c	11.29	
549#	Pig Feet @ ½	2.74	
53343#	Fresh @ ½	266.71	
1906.22	Cured @ 2½%	47.16	
			327.90
3/31/17—Commissions, March, 1917.			
892#	Sausage @ 1c	8.92	
897#	Pig Feet @ ½c	4.48	
62177#	Fresh @ ½	310.89	
3502.68	Cured @ 2½%	87.56	
			411.85
Past Due Accounts paid			
	Mike Toney	25.00	
	United Cash	67.28	
		92.28 @ 2½	2.30
			414.15
11/11/16—Commission Statement, Oct., 1916			
200#	Sausage @ 1c	2.00	
74#	Pig Feet @ ½	.37	
25322#	Fresh @ ½	126.61	
$721.91	Cured @ 2½%	18.05	147.03
4/30/17—Commissions, April, 1917.			
1041#	Sausage @ 1c	10.41	
196#	Pig Feet @ ½	.98	
55915#	Fresh @ ½	279.57	
4490.59	Cured @ 2½%	112.26	
			403.22
5/2		91.20	
		39.29	130.49
			272.74
2/10/17—Commissions, January, 1917			
1192#	Sausage @ 1c	11.92	
547#	Pig Feet @ ½	2.73	
97364#	Fresh @ ½	486.82	
1642.70	Cured @ 2½%	41.06	
			542.53

2489

6/8/17—Commissions, May, 1917

1578#	Sausage @ 1c	15.78	
50897#	Fresh ½	254.48	
6334.46	Cured 2½%	158.46	428.72
Acct. W. H. Wallace, Past Due 323.72 @ 2½%			8.09
			420.63

11/10/15—Commissions for October 1915

Sausage 207# @ 1c	2.07	
Pig Feet 176# @ ½c	.88	
Fresh Meat 15032# @ ½c	75.16	
Fresh Meat 1729.92 @ 2½%	43.25	
		121.35

Commissions for January, 1916

Sausage 1631# @ 1c	16.31	
Fresh Meat 77603# @ ½	388.01	
Cured Meat 3006.02 @ 2½%	75.15	
		479.47

10/30/16—		
Cured Meat 2893.19 @ 2½	72.33	
Fresh " 8390# @ ½	41.95	
Pig Feet 116#	.58	
Sausage 568# @ 1c	5.68	
		120.54

1/10/16—Commissions, December, 1915.

Sausage 29# @ 1c	.29	
Pig Feet 691# @ ½	3.45	
Fresh Meat 55956# @ - ½c	279.78	
Cured Meat $1084.62 :@ 2½%	27.12	
		310.64

6/1/16—May Sales			
1306#	Sausage @ 1c	13.06	
88#	Pig Feet @ 1c	.88	
21731#	Fresh Meat ½c	108.65	
$4,861.12	Cured @ 2½%	121.52	$244.11
4/7	Springfield Gro. Co.	19.00	
	Sanitary Mkt.	76.17	
	Duval Mkt.	51.44	
	Cordray Co.	9.32	
	2½% on	155.93	3.90
			$240.21

2490

April—

	Fresh Meat	37923# @ ½	189.61	
	Cured Meat	3863.93 @ 2½%	71.60	
	Sausage	998# @ 1	9.98	
	Pig Feet	115# @ 1	.57	
			271.76	
5/12	Chech		220.40	
				51.36

12/10/15—Commissions, November, 1915.

Pig Feet	339# @ ½	1.69	
Fresh Meat	29841# @2½	149.20	
Cured Meat	504.91 @ 2½%	12.62	
			163.51
	Omission Oct. report		1.51
			165.02

3/10/16—Commission Account, February, 1916

Sausage	1338# @ 1c	13.38	
Fresh Meat	98706# @ ½c	493.53	
Cured Meat	3959.84 @ 2½%	98.99	
			605.90

4/10/16—Commission Account, March, 1916.

Sausage	1360# @ 1c	13.60	
Pig Feet	90# @ ½	.45	
Fresh Meat	74155# @ ½	370.77	
Cured Meat	5058.44 @ 2½%	125.46	511.28

2491 RESP. EX. 7

July 15, 1921.

Respondent's Exhibit 7.

Cars to Swift & Company, Branch Houses,
From Moultrie, Georgia, Plant.

	1918	1919	1920
Anniston, Ala.			1
Asheville, N. C.	1		
Atlanta, Ga.	65	71	49
Augusta, Ga.	54	49	28
Baltimore, Md.	13	2	
Buffalo, N. Y.		2	
Charleston, S. C.	43	57	51
Charlotte, N. C.	2		2
Chattanooga, Tenn.	14	16	1
Chester, S. C.	1	3	
Chicago, Ill. State Street Market		2	1
Columbia, S. C.	31	16	48
Columbus, Ga.	25	33	36
Denver, Col.			1
Detroit, Mich.		1	
Eufaula, Ala.	1		
Fayetteville, N. C.		1	
Florence, S. C.	4	3	
Greenville, S. C.	35	16	26
Greenwood, S. C.		1	
Jacksonville, Fla.	41	46	54
Jersey City, N. J.	1		
Knoxville, Tenn.	3	3	2
Louisville, Ky.	1		
Macon, Ga.	48	51	54
Miami, Fla.		7	24
Mobile, Ala.		1	
Nashville, Tenn.	6	6	
New Orleans, La.		1	
New York, N. Y.		1	
Norfolk, Va.	11	1	2
Philadelphia, Pa.	1	2	
Pittsburg, Pa.	1	1	
Richmond, Va.	3		
Rocky Mount, N. C.		4	1
Salisbury, N. C.	2		
Savannah, Ga.	20	41	38
Shenandoah, Pa.	1		
South Omaha, Neb.			1
Spartanburg, S. C.	23	9	23
Tampa, Fla.	23	38	27
Valdosta, Ga. *	17	5	
Washington, D. C.		3	
Wilmington, N. C.	6	4	

*Valdosta branch discontinued in April 1919—

t's No. 2492 DOCKET 453 RESP. EX. 8

Sales to Swift & Company, Jacksonville, Fla.
from- Moultrie Plant.

	Wt.	Amt.	
1917		$31,820.52	July through December,
1918	754,386#	182,459.65	
1919	835,481	197,528.97	
1920	938,392	213,419.63	

Sales to Swift & Company, Atlanta, Ga.
from- Moultrie Plant.

	Wt.	Amt.	
1917		$61,457.66	July through December.
1918	950,012#	202,294.15	
1919	948,103	201,444.45	
1920	740,841	161,255.88	

1558

Resp. Ex. 9

Resp. Ex. 10

1555

2494 RESPONDENT'S EXHIBITS 11 AND 12. Respondent Exhibits 11 and 1 (referred

(maps)
filed as physical exhibits.

2495 RESP. EX. 13 Respondent Exhibit 13.

SWIFT & COMPANY
MOULTRIE, GA.

INVESTMENT IN BUILDINGS AND MACHINERY OF SWIFT & COMPANY AT MOULTRIE, GA., OCTOBER 30Th, 1920.

Total Investment

Bldg. No.	Bldgs.	Mchy.	Total (Both)
1	14,671.54		14,671.54
2	204,335.77	34,844.08	239,179.85
3	78,939.19	38,721.18	117,660.37
4	63,085.17	25,203.83	88,289.00
5	47,158.70	48,995.57	96,154.27
6	3,956.72	9,134.49	13,091.21
7	700.00		700.00
8	31,176.58	15,341/06	46,517.64
9	34,004.99	18,522.90	52,527.89
10	83,445.28	142,907.72	226,353.00
11	10,703.74	2,726.37	13,430.11
12	27,308.06	8,826.90	36,134.96
13	1,729.49	2,980.95	4,710.44
14	685.25	2,926.52	3,611.77
15	500.00		500.00
16	55,646.01	11,561.54	67,207.55
Sewer Line	7,770.26		7,770.26
Fire "	8,070.71		8,070.71
New Well	5,165.09		5,165.09
Old "	5,262.80		5,262.80

2496

Cistern	7,215.59		7,215.59
Catch Basin	2,405.04	1,773.74	4,178.78
Q. Pens	11,107.15	4,771.94	15,879.09
Hog Feed Pens	10,250.27		10,250.27
Cattle	681.14		681.14
Fence	6,069.65		6,069.65
Yards	12,317.57	1,786.74	14,104.31
Tracks	4,886.98		4,886.98
Spray Pond	7,602.56	1,550.00	9,152.56
Total	746,851.30	372,575.53	1119,426.83
Deduct Item For Purchase of Railroad tracks Carried on Chicago books	4650.15		4650.15
	$742,201.15		$1,114,776.68

2497 RESPONDENT'S EXHIBITS

Respondent Exhibits 14, 15 and 16 (referred to).

No. 14—pamphlet
"Grow Hogs In The South"

No. 15—pamphlet
"Grow Hogs In The South
that will produce
pork for the
world's markets"

No. 16—pamphlet
"The Two-Crop Hog Plan
for
Southwest Georgia"

These three exhibits filed as physical exhibits.

FEDERAL TRADE COMMISSION
vs
SWIFT & CO.

Resp. Ex 17 Docket 45.5
July 18, 1921
Witness McDowell Reporter MacRae

RESP. EX. 17.

1920 HOG FEEDING EXPERIMENTS
Conducted By
GEORGIA STATE COLLEGE OF AGRICULTURE
Division of Animal Husbandry, Athens, Ga.
and Swift & Co., Moultrie, Ga.
Co-operating
83 Days on Feed. Off Feed June 10th

Feeding Started March 19th.	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6	Lot 7	Lot 8	Lot 9	Lot 10
Average Daily Ration in Lbs. per Head	Corn Meal 4.39	Corn Meal 2.83	Corn Meal 3.58	Sweet Potatoes 7.73	Sweet Potatoes 6.28	Corn Meal 1.42	Corn Meal 1.98	Corn Meal 5.76	Shelled Corn 5.37	Shelled Corn 3.44
	Peanut Meal 1.90	Peanut Meal 2.83	Peanut Meal 1.12	Corn Meal 3.27	Corn Meal 3.23	Velvet Bean Meal 1.42	Velvet Bean Meal 1.98	Tankage .61	Tankage .42	Self-Feeder
	Mixed Self Feeder	Mixed Self Feeder	Selective Method Self Feeder	Tankage 90 *	Peanut Meal 1.48 *	Mixed Self-Feeder	Tankage .22 Mixed Self Feeder	Mixed Self-Feeder	Selective Method Self-Feeder	
Initial weight per head in lbs.	107	105.5	106	109	106.5	98	100.9	115.4	115.5	110.4
Final weight per head in lbs.	224.7	203.1	190.5	229.5	206.5	143.3	179.3	231.4	232.7	159.8
Average weight per head in lbs.	117.7	97.6	84.5	120.5	100	45.3	78.4	116	117.2	49.4
Average daily gain per head in lbs.	1.42	1.18	1.02	1.45	1.20	.55	.94	1.40	1.41	.60
Total feed consumed in lbs. per head	522	470	391	913	849	236	347	529	481	286
Feed consumed in lbs. per 100 lbs. gain	461	480	479	819	912	530	530	456	4.31	614

Cost of 100 lbs. gain	$12.34	$13.97	$12.47	$13.32	$15.18	$11.32	$12.23	$11.94	$10.61	$13.70
Dressing per cent. on two avg. hogs each pen	80.7	82.6	81.1	81.9	81.9	75.3	78.7	81.1	84.8	84.2
FINANCIAL STATEMENT										
Initial cost per head @ $9.40 per cwt.	$10.05	$ 9.92	$ 9.96	$10.25	$10.01	$ 9.21	$ 9.48	$10.85	$10.86	$10.38
Feed cost per head	$14.01	$13.68	$10.20	$16.07	$15.18	$ 5.04	$ 7.88	$13.84	$11.84	$ 6.39
Interest on Inv. at 7 per cent. per annum	$ .42	$ .41	$ .35	$ .42	$ .44	$ .25	$ .30	$ .43	$ .40	$ .29
Total cost per head	$24.48	$24.01	$20.51	$26.78	$25.63	$14.50	$17.66	$25.12	$23.10	$17.06
Value per cwt. June 11, 1920	$14.75	$14.75	$14.54	$14.75	$14.75	$13.79	$14.75	$14.75	$14.75	$13.63
Selling price per head	$38.14	$29.96	$27.69	$33.85	$30.46	$19.84	$26.45	$34.14	$23.32	$21.79
Profit per head	$ 8.66	$ 5.95	$ 7.18	$ 7.07	$ 4.88	$ 5.34	$ 8.79	$ 9.01	$11.22	$ 4.75
Days required to make No. 2's	20	25	29	18	24	68	37	22	22	40
Days required to make No. 1's	41	50	58	38	49	122½	68	43	43	90
Feed cost to make No. 1's	$ 9.87	$ 8.38	$ 7.48	$ 7.46	$ 9.11	$ 7.58	$ 7.83	$ 5.97	$ 5.31	$ 7.54

Prices charged on feed December 1, 1919, Shelled Corn $1.25 per bushel, Corn Meal $1.30 per bushel, Peanut Meal $70.00 per ton, Tankage $108 per ton, Sweet Potatoes 50c per bushel (field run), Velvet Beans $30 per ton plus $9.00 per ton for shelling and grinding.

* Lot 4 and 5.—Corn Meal and Tankage Mixed, Corn and Peanut Meal mixed and fed through self-feeder. Sweet Potatoes fed twice daily by hand in such amounts that hogs would consume proportional amounts of Corn Meal, Peanut Meal and Tankage.

dent's
bit No. 2499 RESP. EX. 18.

Results by Years

1917—3 Mos.
(July, Aug., Sept.) *$5,707.16 Interest on investment not calculated
1918—13 Mos.
(Oct. Nov. Dec. 1917
(Jan. through Oct. 1918) **$273,768.22 Interest @ 8% on investment calculated
1919—12 Mos.
(Nov. 1918 through Oct. 1919) **$259,477.93 Interest @ 8% on investment calculated
1920—12 Mos.
(Nov. 1919 through Oct. 1920) **$214,871.89 Interest @ 8% on investment calculated
1921—8 Mos.
(Nov. 1920 through June 1921) **$231,011.87 Interest @ 8% on investment calculated

Results Figures underlined in black are Profits. Those underlined in Red are Losses.

Docket 453
Witness Smith, July 18, 1921

(*Shows figures underlined in black. **Show figures underlined in red.)

2500 RESPONDENT'S EXHIBIT No. 19

Respondent Exhibit 19.

PRICES PAID FOR COTTON BY MOULTRIE COTTON MILLS, MOULTRIE, GA.

1914	
Apr.	12½—12⅝—12c—11⅝
July	12½—12—11½
Oct.	7—6¾—6½—6c—5½
Dec.	6⅝—6¾—5⅞—5¼—5c
1915	
Apr.	8½—7¾—7½
July	8c—8⅛—7⅞—7½
Oct.	11¾—11¼—10⅞—10½
Dec.	11⅝—11½—11¼—10¾—10½
1916	
Apr.	11⅜—11¼—11½
July	10¾
Oct.	16c—15⅞—16⅛—16¼
Nov.	18½—18¼—18c—17¾—18¾—19c
1917	
Apr.	18½—19½—20c
July	
Oct.	25½—27½—27¾
Dec.	

1918	
Apr.	31c—32c
July	27¾
Oct.	31c—32½—32½—33c
Dec.	26c—25⅞
1919	
Apr.	25c
July	31½—31⅝—32½—33½
Oct.	29c—30½—31½—33.70
Dec.	37c—36½
1920	
Apr.	41c—40.58—40.41—40.92—41.53
July	40.72—40.06
Oct.	22½—22.05—21.22—21.44—22.11—19½—18c—17.13—16.14
Dec.	12⅜—12.34—13.31—14¼—12.45

2501 RESP. EX. No. 20

Respondent's Exhibit 20.

PLANT—MOULTRIE, GA.
OUTSIDE PURCHASES BY YEARS.

	1918 (1/1 to 10/30)	1919 (11/1/18 to 10/30/19)	1920 (11/1/19 to 10/30/20)
Fresh Meats	350,363#	968,317#	1,590,563#
Other Meats	1,271,432#	2,066,286#	4,210,777#
Lard & Shortening	991,916#	966,039#	1,584,344#
Miscellaneous	1,063,730#	1,552,946#	2,041,406#
Total	3,677,441#	5,553,588#	9,427,090#

PART OF EX. 20 (RESP.)

PURCHASES 1918 FISCAL YEAR

1918	Beef	Fresh & Froz Pork	Compound	Butterine	Soap	D. S. Pork	S. P. Pork	Smo Pork	Lard	Sausage	Canned Meats	Butter	Eggs	Cheese
Jan			200 40				95 00			94 94	344 41		67 50	70 43
Feb			295 75		456 01		5 00				183 06	29 40		180 39
March			835 88	49 47	376 15	27 37	35 43	10 30			189 11	53 15		129 63
April	95 37	97 79	895 77	10 00	932 28		50 00	7 89			252 94	80 40		263 61
May	192 09	580 10	1588 73	17 50	856 61	40 00	255 90		91 48	57 15	487 79	123 60		537 50
June	192 09	115 37	557 95	22 00	324 70	5 00	595 00		15	59 22	97 13	72 00		578 13
July			877 69	9 00	83 57	361 17	637 00			101 68	14 25	335 85		772 63
Aug	176 73	532 53	854 50		661 00	341 71	311 25		7 12	364 25	221 49	33 00	180 10	278 89
Sept	352 89	390 69	1278 66		313 50	20 00 44	1214 63		125 01	198 00	222 79	1 50	198 45	591 93
Oct	417 26	350 04	1375 92		21 55	2157 21	614 90	8	934 15	683 75	317 08	281 35	404 55	1259 97
	1437 11	2066 52	8761 25	107 97	4025 37	4992 90	3814 11	18 27	1157 91	1558 99	2330 05	1010 25	850 60	4643 11

1919 FISCAL YEAR

1919														
Nov. 1918	112 70	403 68	1739 13		484 99	1126 76	440 00		89 66	300 39	631 00	151 90	407 70	732 04
Dec 1918	273 93	66 55	970 41	50 40	1057 64	580 50	106 22		3 65	103 71	83 90	215 21	218 25	4 20
Jan	431 90	110 46	50 64	28 30	21 50		389 99	1 53		163 77	250 30	238 80	18 45	306 60
Feb	140 41	336 94	142 23	27 00	472 30	120 31	152 54		73 95	1 20	44 01	12 30	41 75	90 17
March	293 95	280 67	588 09	6 30	749 37	5 00	220 00	6 63	278 51	50 75	184 57	114 10	89 62	89 11
April	386 13	172 13	1032 95	31 48	339 55	45 75	410 86			635 00	376 01	217 20	1 77	615 52
May	310 98	198 42	711 70	9 00		20 48	330 00		20 00	1 74	279 89	22 50	31 92	176 75
June	78 63	80 51	548 72	9 30	336 25	585 33	80 00	2 95	50	2 91	293 68	155 10	18 00	413 58
July	350 93	810 90	2222 03	21 50	957 34	930 50	564 24	10 26	24 45	574 13	1358 30	253 50	7 20	241 49
Aug	621 27	719 11	132 00	7 10	1490 50	495 00	530 00	40		10 00	238 06	304 95	71 10	595 96
Sept	447 87	1823 33	255 30	15 80	439 66	1999 52	1066 47	24 69	56 69	406 02	335 69	283 99	48 60	679 89
Oct	567 07	664 70	648 79	44 90	824 93	2385 08	934 45	4 55	70 99	80 05	687 77	489 10	61 65	684 38
	4015 77	5667 40	9041 99	251 08	7174 03	8294 23	5224 77	51 01	618 40	2329 67	4763 18	2458 65	1016 01	4629 69

	1918		1919	
Fresh Meats	3503 63	Fresh Meats	9683 17	
Other Meats	12714 32	Other Meats	20662 86	
Lard & Compound	9919 16	Lard & Compound	9660 39	
Misc'l	10637 30	Misc'l	15529 46	
	36774 41		55535 88	

PART OF EX. 20 (RESP.)

PURCHASES 1920 FISCAL YEAR

1920	Beef	Fresh & Froz Pork	Com-pound	Butter-ine	Soap	D. S. Pork	S. P. Pork	Smo. Pork	Lard	Sau-sage	Canned Goods	Butter	Eggs	Cheese	Lard Mfg.
Nov	100 57	275 83	1723 36	14 70	339 00	3052 14	2902 57			110 74	264 05	209 50	45 00		
Dec	267 30	436 89	877 65	83 50	804 22	1261 66	125 00		94 75	226 50	172 00	24 00	258 75	446 64	
Jan	244 82	161 43	465 77		1004 90	9 68	270 78	27	136 60	22 42	960 08	142 70	3 58	192 26	
Feb	331 43	387 13	1393 39	2 70	470 38	498 44	141 54	3 78	109 90	92 93	329 60	30 70	49 92	385 52	
March	170 60	560 74	306 00	18 99	1221 90	58 36	201 40	2 11	285 00	222 31	100 56	279 77	31 42	389 95	
April	452 28	768 65	944 81	30 50	472 80	3 00	5 00	1 10	132 50	63	121 20	230 70	30 40	777 10	
May	1974 39	2372 76	1226 44	31 10	801 36	746 18	686 82	22 20	183 00	905 90	155 16	266 50	13 05	409 56	
June	350 23	2317 58	1344 77	50 30	655 46	2616 78	196 00	97	656 70	1450 05	454 81	265 50	5 85	22 79	
July	103 16	1276 29	1061 00	13 80	1807 56	2997 98	794 52	37 07	202 12	1105 16	51 51	122 00	4 95	361 18	
Aug	183 36	1012 59	978 16	2 50	1043 67	2464 81	770 00	25 74	192 50	1041 92	164 19	447 00	183 60	287 60	
Sept	29 59	485 00	784 20		1013 50	4417 16	500 12	13 50	183 00	1679 53	96 74	243 00	180 00	1267 54	
Oct.	249 06	1393 95	2036 99		861 95	1510 95	1003 20	116 64	473 97	2022 83	84 34	310 92	180 45	1469 67	50 76
	4456 79	11448 84	13142 54	248 09	10596 70	3715 14	6696 95	223 38	2650 14	8880 92	2954 24	2572 49	986 97	6009 81	50 76
						23352 28									

	1920
Fresh Meats	15905 63
Other Meats	42107 77
Lard & Compound	15843 44
Misc'l	20414 06
	94270 90

2504 RESPONDENT'S EX. 21

GEORGIA NORTHERN RAILWAY COMPANY
Flint River & Northeastern Railroad Co.

STATEMENT
of
Packing House Products and Live Stock,
Received at And Forwarded From
Moultrie, Ga.
January 1st, 1914 to December 31st, 1920
Inclusive

Divided into three periods as follows:

		Received	Forwarded
Period: Jany 1st, 1914 to Dec. 31st, 1914—		506,577	688,202
Received	506,577		
Forwarded	688,202		
Total received and forwarded	1,194,779		

		Mo. Pkg. Co.	others
Period: Jany 1st, 1915 to June 30th, 1917—		39345905	1429665
Not divided as to received and forwarded.			
Moultrie Packing Co	39,345,905		
Others	1,429,665		
Total received and forwarded Moultrie Packing Co. and others	40,775,570		

Period: July 1st, 1917 to Dec. 31st, 1920-	Swift & Co.		Others	
	Received	Forwarded	Received	Forwarded
	67458891	44497455	2460185	720465
Swift & Co. rec'd	67458891	Others rec'd	2460185	
Swift & Co. Ford	44497455	Others Ford	720465	
Total received and forwarded	111956346		3180650	
Total Swift & Co. rec'd and ford			111956346	
Total others received and forwarded			3180650	
Total received and forwarded S&Co. and others			114136996	

—Recapitulation—

		Average per month
Total rec'd and ford period 1 /1 /14 to 12 /31 /14—12 months	1194779	99565
Total rec'd and ford period 1 /1 /15 to 6 /30 /17—30 Months	40775570	1359186
Total rec'd and ford period 6 /30 /17 to 12 /31 /20—42 months	114136996	2717547

I hereby certify that the above figures were compiled under my personal supervision and to the best of my knowledge and belief are correct. Same were taken from permanent records on file with the Georgia Northern Railway Company.

(Signed) C. O. HUFF
Chief Clerk
Accounting Department
Georgia Northern Railway Company

2505 RESPONDENT'S EXHIBIT No. 22

Respondent Exhibit 22 (refer to).

is filed between Comm. Ex. 183 and 184
(Schedule B)

2506 RESPONDENT'S EX. 23.

Respondent Exhibits 23 and 2

Swift & Company,
Andalusia, Ala.

Results of the operation of the Andalusia plant fiscal years. Results are based upon purchase price of product at market value, actual expenses of operation and supervision, 8% interest on investment, and market value of product at time of shipment.

****

1917	Aug. Sept. & Oct.	$ 3,749.59	Profit
1918	52 Weeks	$120,422.96	Loss
1919	52 Weeks	$195,157.54	Loss
1920	52 Weeks	$172,386.53	Loss
1921	35 Weeks to July 2nd.	$172,579.72	Loss

Fiscal year is November to October inclusive.

2507 RESPONDENT'S EX. 24

Swift & Company
Andalusia, Ala.

CATTLE KILLED BY MONTHS ANDALUSIA ALABAMA.

	1916	1917	1918		1919		1920		1921	
	1916	1917	Loc.	O.S.	Loc.	O.S.	Loc.	O.S.	Loc.	O.S.
January		130	800		2113	202	1343	148	921	
February		173	636		1449	42	714	134	866	
March		56	1187		1184	466	308	36	884	None
April		190	1556		789	78	357	135	922	
May	No	383	1364		210		95	157	577	
June	Re-	661	1315	213	338		287	186	382	
July	cord	148	1658	296	354	301	527	279		
August		263	844	340	385	291	499	355		
September		452	731	685	709	194	437	350		
October		477	1698	325	323	789	844	173		
November		198	898	364	193	672	535	109		
December		247	1001	343	357	320	679			
TOTAL		3378	18620	2566	8404	3355	6625	2062	4552	000

Note
Loc.—is purchased locally.
O. S.—is purchased outside (Montgomery Etc.)

2508 RESP. EX. 25

Swift & Company
Andalusia, Ala.

HOGS KILLED BY MONTHS ANDALUSIA ALABAMA.

	1917	1918		1919		1920		1921	
		Loc.	O.S.	Loc.	O.S.	Loc.	O.S.	Loc.	O.S.
January		10714		13477		11457	1090	4642	5674
February		9902		8906		9174	403	5183	4410
March		8742		7044		5419	332	2744	3005
April		4180		6888	210	4458		1382	560
May	1818	2031	469	3854	102	2150	568	938	679
June	1032	1796	841	1922	231	850	1267	96	
July	601	1975	893	1374	699	421			
August	628	2409	181	887	1188	None			
September	778	2643		830	1220	5			
Oct.	3565	3725		1617	1804	7			
Nov.	4238	4118		2440	1360	425			
Dec.	7538	9354		4346	2277	757	740		
TOTAL	20198	61589	2387	53585	9091	35123	4400	14985	14328

Note
Loc.—is purchased locally.
O. S.—is purchased outside (Nashville, Montgomery Etc.)

2509 RESPONDENT'S EXHIBIT No. 26

Statement of outside purchases, Swift & Company, Andalusia, Alabama, monthly for last three months of fiscal year of 1917, fiscal years 1918, 1919, 1920 and 1921, to and including June.

The following is the summary by years:

Fiscal Year	Fresh Meats		Cured Meats	
	Weight	Amount	Weight	Amount
1917	None	None	180,502 lbs.	$45,137.76
1918	139,873 lbs.	$22,127.62	77,750	23,187.90
1919	448,952	79,181.20	578,045	157,739.54
1920	797,607	127,687.44	1,254,250	272,138.59
1921	160,626	27,018.34	250,780	49,408.48
	Lard and Other Shortenings		Miscellaneous	
1917	None	None	None	None
1918	214,198 lbs.	$50,291.15	339,274 lbs.	$85,213.86
1919	680,206	173,534.11	1,022,916	204,729.69
1920	687,604	154,139.95	1,079,574	268,401.97
1921	312,147	40,250.73	245,791	65,326.55

2510 RESP. EX. No. 27.

Respondent's Exhibits 27 and

Swift & Company,
Andalusia, Ala.

Investment Accounts—Andalusia, Alabama

On July 24th 1917	Land, Building & Machinery	$144,717.54
" 24th 1917	Office Furniture & Fixtures	2,167.99
		$146,885.53
On July 2nd., 1921	Land, Building & Machinery	$415,444.57
" 2nd., 1921	Office Furniture & Fixtures	5,771.59
" 2nd., 1921	Horse, Wagon, Harness & Autos.	5,884.20
		$427,100.36
Expenditure between these dates—		$280,214.83

2511 RESP. EX. 28

SWIFT & COMPANY
ANDALUSIA, ALA.

STATEMENT SHOWING NUMBERS OF HOGS AND AVERAGE LIVE COST BY MONTHS OCTOBER 1916 TO JULY 1917 AT ANDALUSIA, ALA.

MONTHS	NUMBER HEAD	AVERAGE LIVE COST.	
1916			
October	3861	8.53	
November	8550	8.27	
December	7411	7.74	
1917			
January	7986	7.98	
February	10368	9.12	
March	5255	10.61	
April	5017	11.98	
May	1973	11.69	
June	1124	12.45	
July	923	14.47	13.00

2512 RESP. EX. No. 29

SWIFT & COMPANY
ANDALUSIA, ALA.

STATEMENT SHOWING NUMBER OF HOGS PURCHASED AND AVERAGE LIVE COST BY MONTHS AUGUST 1917 TO JUNE 4th 1921, ANDALUSIA, ALA.

MONTHS	NUMBER HEAD	AVERAGE LIVE COST
1917		
August	644	$13.71
September	753	14.36
October	3975	15.11
November	6740	14.69
December	7658	13.99
1918		
January	12715	12.88
February	10218	12.97
March	8547	13.78
April	5347	14.95
May	2543	16.21
June	2740	16.25
July	2773	16.58
August	2544	17.89
September	2776	18.22
October	3640	15.73
November	4667	13.39
December	9974	13.27
1919		
January	15432	12.58
February	7802	12.33
March	8252	14.22
April	6328	16.38
May	3740	17.17
June	2051	17.17
July	1999	18.82
August	2084	18.65
September	2256	15.23
October	3239	12.99
November	4395	13.35
December	6551	12.51

2513 RESP. EX. No. 29, PAGE 2

MONTHS	NUMBER HEAD	AVERAGE LIVE COST
1920		
January	13465	12.82
February	9466	12.55
March	5882	13.26
April	4068	13.56
May	3014	13.04
June	2170	14.00
July	436	13.84
August	239	13.28
September	318	14.73
October	176	12.01
November	419	9.71
December	1615	7.80
1921		
January	11685	8.18
February	9977	7.95
March	4127	8.26
April	2095	7.15
May	1451	7.08

ondent's hibit No. 2514 RESP. EX. No. 30

Swift & Company
Andalusia, Ala.

Cars Forwarded From Andalusia, Alabama.

Houses	1917	1918	1919	1920	1921
Birmingham, Ala.	32	112	85	70	54
Montgomery, Ala.	5	65	61	52	40
Mobile, Ala.	2	40	50	64	25
Pensacola, Fla.	2	41	46	53	37
New Orleans, La.	10	38	65	73	35
Memphis, Tenn.	6	22	33	29	16
Meridian, Miss.		2	9	8	11
Gadsden, Ala.		7	2	8	4
Anniston, Ala.	5	56	23	8	7
Sheffield, Ala.			1	1	2
Jackson, Miss.		1	1	2	4
Vicksburg, Miss.		1			2
Decatur, Ala.					1
Hattiesburg, Miss.			1		1
Moultrie, Ga.		8	9	6	3
Huntsville, Ala.					2
Fort Worth, Tex.			2	1	
New York, N. Y.			2		
Brooklyn, N. Y.		1			
Philadelphia, Pa.		2	6		
Jersey City, N. J.		13	8		
Natchez, Miss.		3	1		
Greenville, Miss.		1		1	
St. Louis, Mo.		2			
Albany, Ala.		3	3		
Norfolk, Va.	2	9			
Eufaula, Ala.	1	1	(Branch House discontinued Sept. 1st. 1918, worked by car routes.)		
Baltimore, Md.	2	11	1		
Atlanta, Ga.	2	2	1		
Chicago, Ill.	2	47	43	19	19
Charleston, S. C.	1				
Tuscaloosa, Ala.		1			4
Baton Rouge, La.		1			
Nashville, Tenn.		1		4	
LaGrange, Ga.			2	7	20
Kansas City, Kan.			1		
St. Joseph, Mo.			2		
Washington, D. C.			1		
West Point, Miss.			1		
Buffalo, N. Y.				1	
Total	72	491	460	407	287

Total 1717.

To July 25th, 1921

Note: 1617 Begins July 30th.

2515 RESPONDENT'S EXHIBIT No. 31.

Respondent's Exhibit No. 31 (referred to).

Map of Alabama
Filed as physical exhibit.

2516 RESPONDENT'S EXHIBIT No. 32.

Respondent's Exhibit No. 32.

Service and Regulatory Announcements issued by the Bureau of Animal Industry, United States Department of Agriculture.

The following are extracts from these Announcements:

(Page 5 of Announcement issued February 19, 1918:)

Swine slaughtered under Federal inspection for 12 months ending December, 1917 — 33,909,704.

Swine slaughtered under Federal inspection for 12 months ending December, 1916 — 43,083,703.

(Page 2 of Announcement issued March 10, 1919:)

Swine slaughtered under Federal meat inspection for 12 months ending December, 1918 — 40,390,783.

(Page 3 of Announcement issued March 20, 1920:)

Swine slaughtered under Federal meat inspection for 12 months ending December, 1919 — 41,811,830.

(Page 3 of Announcement issued February 25, 1921:)

Swine slaughtered under Federal meat inspection for 12 months ending December, 1920 — 38,018,684.

2517 RESPONDENT'S EXHIBITS

Respondent's Exhibits 33, 34-A, 34-C, and (referred

No. 33—certified copy of
Monthly Crop Reporter for the month of October, 1919.

No. 34-A, certified copy of
Bulletin for Georgia, fourteenth census, 1920.

No. 34-B, certified copy of
Bulletin for Alabama, fourteenth census, 1920.

No. 34-C, certified copy of
Bulletin for Alabama, fourteenth census, 1920.

No. 35—certified copy of
Records of Bureau of Markets of
Stock Yards receipts, etc.

These exhibits filed as physical exhibits.

ondent's hibit No. 2518 RESP. EX. No. 36

SWIFT & COMPANY
NUMBER OF ANIMALS SLAUGHTERED—BY FISCAL YEARS

FISCAL YEARS:	Cattle	Calves	Sheep	Hogs
1917	2,153,908	864,472	3,162,930	7,288,159
1918	2,909,213	1,234,583	3,413,754	8,190,304
1919	2,337,124	1,231,262	4,044,719	8,662,824
1920	1,984,710	1,212,436	3,315,317	6,914,284

Notes:
1917 Fiscal Year October 1st, 1916—Sept. 30th, 1917.
1918 Fiscal Year October 1st, 1917—Oct. 31st, 1918.
1919 Fiscal Year November 1, 1918—Oct. 31st, 1919.
1920 Fiscal Year November 1, 1919—Oct. 31st, 1920.

ndent's bits Nos. to 43 inc. rred to). 2519 RESP. EX. No. 37—PAMPHLET.

"Meat Production, Consumption, and Foreign Trade In United States, 1907-1920."

filed as physical exhibit.

2520 RESPONDENT'S EXHIBITS—

38, 39, 40, 41, 42 and 43

Omitted by agreement.

ndent's hibit No. 2521 RESP. EX. No. 44.

May 5th, 1919.

Swift & Company,
Manager's Office,
Andalusia, Ala.

Notice you do not seem to have on our weekly concession letter, S & W Sales Department. They are to receive a copy. Please arrange to see that next week copies of both letters are sent to Mr. L. A. Gilbert, S & W Sales Department, and so show it on the bottom of our weekly concession letter.
GDR MA

RESP. EX. 45

ANDALUSIA WEEKLY DIFFERENTIAL LETTER No. 31

CANCELLING ALL PREVIOUS DIFFERENTIALS

Basis S. & W. Branch House List F. O. B. Kansas City. Product not mentioned below will be invoiced S. & W. List F. O. B. Kansas City, except D. S. and Bacon Meats Daily Wired Market and Basis Circular Differentials.

Fresh Pork Cuts

Fresh Pork Loins, all averages	2c under
Frozen Pork Loins, 8-10	2c under
Fresh Skinned Shoulders, all averages	2c under
Fresh Boston Butts	2c under
Fresh Regular and Skinned Hams	3c under

Pigs

Fresh Shipper Pigs	22c F.O.B. Kas. City

Fancy and Miscellaneous Meats

Pork Lips, 25-lb., 50-lb. and 100-lb. boxes	1c under
Pork Feet, 25-lb boxes	1c under
Pork Tripe, 100-lb. boxes	1c under
Pork Chitterlings Uncooked, 25-lb. and 50-lb. boxes	2c under
Ox Tails, 1-lb. and under	2c under

S. P. and Smoked Meats

Dixie Regular Hams	2c under Premium
Dixie Skinned Hams	2c under Prem. Skd.
Dixie Bellies	1c under Empire.
S. P. Dixie Regular Hams, R. B. & T. to Houses only that cook	2c under Premium
S. P. Dixie Skinned Hams, R. B. & T. Houses only that cook	2c under Premium
Seminole Hams, 8-10	4c under Empire
Seminole Hams, 10-14	4c under Empire
Seminole Hams, 14-18	4c under Empire
Seminole Skinned Hams, 8-10	3c under Emp. Skd.
Seminole Skinned Hams, 10-14	3c under Emp. Skd
Seminole Skinned Hams, 14-18	3c under Emp. Skd.
Seminole Skinned Hams, 18-24	3c under Emp. Skd
Seminole Skinned Hams, 24-28	3c under Empire Skd.
Seminole Bellies, 12-lb. and down	3c under Empire
Seminole Picnics, 4-6	2c under Empire
Seminole Picnics, 6-10	2c under Empire
Seminole Regular Hams, R. B. & T. to Houses only that cook	3c under Empire
Seminole Skinned Hams, R. B. & T. to Houses only that cook	2c under Emp. Skd.
S. P. Boneless Shoulder Butts	½c under
S. P. Boston Butts	1½c under

Lard

Seminole Brand Pure Lard, 20-lb. tubs, 60-lb. tubs and tierces only	1c under Silverleaf

Beef Tongues

Cooked Beef Tongues	2c under

Cooked Hams

Dixie Brand Hams, Regular or Skinned	1c under Premium
Seminole Brand Hams, Regular or Skinned	1c under Empire

D. S. and Bacon Meats Shipped on Consignment

Basis Chicago wired market basis circular differentials. F. O. B. Chicago.

Short Ribs, 16-25	1½c under
Short Ribs, 25-50	1c under
Short Ribs, 50 and over	1c under
Extra Short Clears, 30-lb. and over	1c under
Rib Bellies, 12-16	3c under
Rib Bellies, 16-25	1½c under
Rib Bellies, 25-35	1c under
Regular Plates	

Branch House Provision Department

Chicago, Aug. 4, 1919

FEDERAL TRADE COMMISSION
vs
SWIFT & CO.

Docket No. 453 — Exhibit No. 45
Respondent's — Date 9/10 21
Witness — Reporter
G D Rogers — E J Vogel

dent's
ibit No.

RESP. EX. 46

SWIFT & COMPANY
Andalusia, Ala.

April 18th, 1919

Manager
SWIFT & COMPANY
WEEKLY CONCESSION LETTER No. 16
CANCELLING ALL PREVIOUS CONCESSIONS
QUOTE FOR SHIPMENT WEEK ENDING APRIL 26th UNLESS
UNLESS PREVIOUSLY CHANGED

(All items not shown S&W Kansas City, These Concessions are not in addition to Chicago)

FRESH PORK	
Fresh Skinned Shoulders 15# (Special)	2 c off
Fresh Boston Butts	2 c off
Fresh Regular Hams	2½c "
Fresh Pork Loins all averages	½c off
Fresh Picnics	1 c off
Spare Ribs Fresh or Frozen 50# bxs. (Limited)	List
Pork Tenderloins (Frozen 20# bxs. 3c off Standard 10# pails	List
Neck Bones (Fresh or Frozen) 25 & 50 bxs. (Limited)	List
SPECIAL	
Fresh Shipper Pigs 100# Down (Limited)	18½c
FANCY AND MISCELLANEOUS MEATS	
Pork Lips 25 & 50# bxs.	1 c off
Pork Snouts 50# "	1 c off
Pork Livers 25# bxs.	1 c off
Pork Ears 25, 50 & 100# Bxs	1 c off
Pork Brains 10# Pails	List
Pork Tails Frozen 25 & 50 Boxes	List
Pork Tripe 25 & 50# Bxs. (Appreciate orders)	2 c off
Pork Tripe 50# Bxs	1 c off
Pork Chitterlings Uncooked 25# bxs. 1c off 50# bxs	2 c off
Ox Tail 1 lb and under (Appreciate more liberal orders)	2 c off
Beef Livers (Limited)	List
Beef Brains (Limited)	List
Beef Melts (Frozen)	List

SILVER BEAFEDBRAND PURE LARD
Discontinued making

FEDERAL TRADE COMMISSION
vs
SWIFT & CO.

Docket No. 453	Exhibit No. 46
Respondent's	Date 9/10/21
Witness	Reporter
G. D. Rogers	E. J. Vogel

S 100 United States Food Administration License Number G 89753

2523 EXHIBIT No. 47

Respondent's Exhibit No. 47.

Chicago, July 28, 1919

ANDALUSIA WEEKLY DIFFERENTIAL LETTER No. 30
CANCELLING ALL PREVIOUS DIFFERENTIALS

Basis S&W Branch House List FOB Kansas City, Product not mentioned below will be invoiced S&W List FOB Kansas City, except D S and Bacon Meats Daily Wired Market and Basis Circular Differentials FOB Chicago.

FRESK PORK CUTS

Fresh Pork Loins all averages	2 c under
Frozen Pork Loins 8 /10 shipment from New Orleans only	2 c "
Fresh Skinned Shoulders all averages	2 c "
Fresh Boston Butts	2 c "
Fresh Regular and Skinned Hams	3 c "

PIGS

Fresh Shipper Pigs	22c FOB Kas. Cty

FANCY & MISCELLANEOUS MEATS

Pork Lips 25# 50# & 100# boxes	1 c under
Pork Feet 25# boxes	1 c "
Pork Tripe 100# boxes	1 c "
Pork Chitterlings Uncooked 25# & 50# boxes	2 c "
Ox Tails 1# and under	2 c "

S. P. & SMOKED MEATS

Dixie Regular Hams	2 c under Prem. -
Dixie Skinned Hams	2 c " " Skd.
Dixie Bellies	1 c " Empire
SP Dixie Regular Hams RB&T to Houses only that cook	2 c " Premium
SP Dixie Skinned Hams RB&T to Hses only that cook	2 c " "
Seminole Hams 8 /10	4 c " Empire
Seminole Hams 10 /14	4 c " "
Seminole Hams 14 /18	4 c " "
Seminole Skinned Hams 8 /10	3 c " " Skd
Seminole Skinned Hams 10 /14	3 c " " "
Seminole Skinned Hams 14 /18	3 c " " "
Seminole Skinned Hams 18 /24	3 c " "
Seminole Skinned Hams 24 /28	3 c " " "
Seminole Bellies 12# and down	3 c " " "
Seminole Picnics 4 /6	2 c " " "
Seminole Picnics 6 /10	2 c " " "
Seminole Regular Hams RB&T to Hses only that cook	3 c under Emp
Seminole Skinned Hams RB&T " " " "	2 c " " Skd.
SP Boneless Shoulder Butts	½c under
SP Boston Butts	1½c "

LARD

Seminole Brand Pure Lard 20# tubs, 60# tubs and tierces only	1c under Silv.

BEEF TONGUES

Cooked Beef Tongues	

COOKED HAMS

Dixie Brand Hams Regular or Skinned	1 c under Prem.
Seminole Brand Hams Regular or Skinned	1 c under Emp

D. S. AND BACON MEATS SHIPPED ON CONSIGNMENT

Basis Chicago wired market basis circular differentials FOB Chicago	
Short Ribs 16 /25	1 ¼ under
Short Ribs 25 /50	1 c under
Short Ribs 50 / and over	1 c under
Extra Short Clears 30# and over	1 c under
Rib Bellies 12 /16	3 c under
Rib Bellies 16 /25	1-½c under
Rib Bellies 25 /35	1 c under
Regular Plates—	1 c "

BRANCH HOUSE PROVISION DEPARTMENT

A—7 /28—8 /2

FEDERAL TRADE COMMISSION

vs

SWIFT & CO

Docket No. 453	Exhibit No. 47
Respondent's	Date 9/10/21
Witness G. D. Rogers	Reporter E. J. Vogel

ndent's
ibit No.
(referred

2524 RESPONDENT'S EXHIBIT No. 48.

Certified copies of directories of Bureau of Animal Industry for the years 1916, 1917, 1919, 1920.

Filed as physical exhibit.

MAP:

TOO

LARGE

FOR

FILMING

2526 RESPONDENT'S EXHIBITS

Respondent Exhibits 50-56 inc (referred

Nos.
50—Ledger
51—Consignment report, Andalusia Packing Co.
52—Consignment Invoice Book.
53—Consignment Invoice Book.
54—Ledger
55—Ledger.
56—Ledger.
Filed as physical exhibits.

ANDALUSIA WEEKLY DIFFERENTIAL LETTER No. 37
Cancelling All Previous Differentials

Basis S. & W. Branch House List F. O. B. Kansas City. Product not mentioned below will be invoiced S. & W. List F. O. B. Kansas City, except D. S. and Bacon Meats Daily Wired Market and Basis Circular Differentials.

Pork Cuts
- Fresh or Frozen Pork Loins 8-10 lbs. avg.....4c under
- Fresh or Frozen Pork Loins 10-12 lbs. avg and heavier.....4c under
- Fresh or Frozen Skinned Shoulders all averages.....3c under
- Fresh, Regular and Skinned Hams all averages.....1c under

Do not order Fresh or Frozen Pork Loins heavier than 10-12 lbs. or Shoulders heavier than 12-15 lbs. Pork Loins and Shoulders will be invoiced at price of average shipped.

Pigs
- Fresh 30-50.....out F. O. B. Kansas City
- Fresh 50-60.....out F. O. B. Kansas City
- Fresh 60-80.....out F. O. B. Kansas City
- Fresh 80-100.....12c F. O. B. Kansas City
- Hogs, 100-150.....13¼c

Above are for shipper dressed.

Fancy Meats
- Fresh Pork Ears.....½c under
- Fesh and Frozen Pork Lips.....1c under
- Fresh and Frozen Pork Snouts.....1c under

S. P. & Smoked Meats
- Dixie Regular Hams.....½c under Empire
- Dixie Skinned Hams.....½c over Empire Skd.
- Seminole Picnics, 6-10.....2½c under Empire
- Seminole Bellies, 6-12.....5c under Emp. 8-10 av.
- Seminole Narrow Bacon 4-6.....3½c under Emp. 8-10 av.
- Dixie Regular Hams, R. B. & T. to Houses only that cook.....1c under Premium 916
- Dixie Skinned Hams, R. B. & T. to Houses only that cook.....1c under Premium 917
- Seminole Regular Hams, R. B. & T. to houses only that cook.....1½c over Empire 912
- Seminole Skinned Hams, R. B. & T. to houses only that cook.....same as Empire Skd. 913
- S. P. Boneless Shoulder Butts.....out
- S. P. Boston Butts.....14½c
- Smoked Boston Butts, per lb.....20½c

Vinegar Pickled Pork Tongues C & S
- One-eighth Barrels 17 lbs. net.....1.75 each
- One-fourth Barrels 35 lbs. net.....2.90 each

F. O. B. Kansas City.

Lard
- Seminole Brand Pure Lard.....1c under Silverleaf

Beef Tongues

Short Cut Beef Tongues, Fresh 21, S. P. 22½, Smoked 28, F. O. B. K. C.

Dixie Bellies	½c over Empire
Seminole Hams, 8-10	3c under Empire
Seminole Hams, 10-14	3c under Empire
Seminole Hams, 14-18	out 3c under Empire
Seminole Skinned Hams, 8-10	2½c under Emp. Skd.
Seminole Skinned Hams, 10-14	2½c under Emp. Skd.
Seminole Skinned Hams, 14-16	2½c under Emp. Skd.
Seminole Skinned Hams, 16-18	2½c under Emp. Skd.
Seminole Skinned Hams, 18-24	2½c under Emp. Skd.
Seminole Skinned Hams, 24-28	2½c under Emp. Skd.
Seminole Picnics, 4-6	2½c under Empire

Long Cut Beef Tongues, Fresh 19, S. P. 20½, Smoked 25½, F. O. B. K. C.

Cooked Hams

Dixie Brand Hams, Regular Skinned or skinless	1c under Premium
Seminole Brand Hams, Regular or Skinned	1c under Empire
(All flat style Cooked Hams	1c over round style)

D. S. and Bacon Meats Shipped on Consignment
Basis Chicago wired market basis circular differentials.

Clear Bellies all avgs	2c under
Rib Bellies all avgs	2c under

All standard product from hard hogs will be invoiced at full S and W List, F. O. B. Kansas City.

Quotations are for goods packed and F. O. B. cars Kansas City.

Cartage will be charged for any goods shipped by local freight. Our responsibility ceases after goods are receipted for in good order by transportation company, and we will not guarantee condition of shipments at arrival at destination.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.

All prices are quoted subject to market changes, and subject to our having the product in stock.

We do not guarantee to ship product as ordered unless specific arrangements have been made.

Branch House Provision Department

Chicago, September 12, 1921

FEDERAL TRADE COMMISSION
vs
SWIFT & CO.

Docket No. 453	Exhibit No. 57
Respondent's Witness	Date 9/12/21
E A Fox	Reporter E J Vogel

MOULTRIE WEEKLY DIFFERENTIAL LETTER No. 37
Cancelling All Previous Differentials

Basis S. & W. Branch House List F. O. B. Kansas City. Product not mentioned below will be invoiced S. & W. List F. O. B. Kansas City, except D. S. and Bacon Meats Daily Wired Market and Basis Circular Differentials.

Fresh and Frozen Pork Cuts		
Frozen Pork Loins, 8-10 (Hard)	1c under	
Frozen Pork Loins, 10-12 (Hard)	1c under	
Pork Loins, Fresh or Frozen 8-10 lbs. avg	4c under	
Pork Loins, Fresh or Frozen 10-12 lbs. avg	2c under	
Boston Butts, Frozen	out	
Skinned Shoulders, Fresh or Frozen	out	
Fresh Extra Lean Pork Trimmings	10c	F.O.B. Kas. City
Frozen Extra Lean Pork Trimmings	9c	F.O.B. Kas. City
Pigs		
Fresh and Frozen 30-50	13c	F. O. B. Kansas City
Fresh and Frozen 50-60	13c	F. O. B. Kansas City
Fresh and Frozen 60-75	13c	F. O. B. Kansas City
Fresh and Frozen 75-85	13c	F. O. B. Kansas City
Fresh and Frozen 85-100	13c	F. O. B. Kansas City
Fresh and Frozen Hogs, 100-120	12½c	F. O. B. Kansas City
Above are for shipper dressed.		
Fancy Meats		
Frozen Pork Brains	3c under	
Fresh Pork Melts	1c under	
Frozen Pork Livers	1c under	
Frozen Pork Ears	1c under	
S. P. and Smoked Meats		
Dixie Regular Hams, 8-10	out	1c over Empire
Dixie Regular Hams, 10-12	out	1c over Empire
Seminole Picnics, 6-8	1c under Empire	
Seminole Picnics, 8-10	1c under Empire	
Seminole Strips, 3-4	4c under Empire	
Seminole Strips, 4-5	2c under Empire	
Seminole Strips, 5-6	out	2c under Empire
Seminole Bacon Strips	½c over Sem. Wide Bacon	
Seminole Bellies, 6-8	4c under Empire	
Seminole Bellies, 8-10	2c under Empire	
Seminole Bellies, 10-12	out	2c under Empire
Seminole Picnics, 8-10 Rolled and Tied	Same as Empire	
Seminole Skd. Picnics, 8-10 Rolled and Tied	Same as Empire	
Dixie Regular Hams, R. B. & T. to houses only that cook	1c over Empire 912	
Dixie Skinned Hams, R. B. & T. to houses only that cook	1c over Empire 913	
Seminole Regular Hams, R. B. & T. to houses only that cook	1c under Empire 912	
Seminole Skinned Hams, R. B. & T. to houses only that cook	same as Empire Skd. 913	
* Boneless Butts, S. P	16	
Cottage Roll, smoked	24	
Boston Butts, S. P	14	
Boston Butts, Smoked	18	
Vinegar Pickled Pork Tongues C & S		
One-eighth Barrels 25 lbs. net	out	3.20 each
F. O. B. Kansas City		
Lard		

Dixie Regular Hams, 12-14	out	1c over Empire
Dixie Skinned Hams, 12-14	out	
Dixie Skinned Hams, 14-16	out	1c over Empire
Dixie Bellies, 4-6		1c over Empire
Dixie Bellies, 6-10	Out	
Seminole Regular Hams, 6-8	out	1c under Empire
Seminole Regular Hams, 8-10	out	2c under Empire
Seminole Regular Hams, 10-12		2c under Empire
Seminole Regular Hams, 12-14		2c under Empire
Seminole Skinned Hams, 12-16		2c under Empire
Seminole Skinned Hams, 16-18		2c under Empire
Seminole Skinned Hams, 18-20		2c under Empire
Seminole Skinned Hams, 20-24		2c under Empire
Seminole Picnics, 3-6		1c under Empire

Seminole Brand Pure Lard, 30-lb., 60-lb., 80-lb. tubs, tierces, 50-lb. net cans, 6-10 lb. cases, 12-5 lb. cases...1¼c under Silverleaf

Beef Tongues

Short Cut Beef Tongues, Fresh, 21c; S. P. 22½c; Smoked 28c.....F.O.B. Kansas City

Long Cut Beef Tongues, Fresh 19c; out F.O.B. Kansas City

Cooked Hams

Dixie Brand Hams, Regular or Skinned out.....1c under Premium

D. S. and Bacon Meats Shipped on Consignment

Basis Chicago wired market basis circular differentials.

D. S. and Bacon Rib Bellies all averages.....1c under

D. S. Bacon Clear Bellies, all avg.....1c under

All standard product from hard hogs will be invoiced in full at S. & W. List F. O. B. Kansas City.

Quotations are for goods packed and F. O. B. cars Kansas City.

Cartage will be charged for any goods shipped by local freight. Our responsibility ceases after goods are receipted for in good order by transportation company, and we will not guarantee condition of shipments at arrival at destination.

All goods quoted herein will be invoiced at prices in effect at time of shipment, unless other arrangements are made when placing order.

All prices are quoted subject to market changes, and subject to our having the product in stock.

We do not guarantee to ship product as ordered unless specific arrangements have been made.

Branch House Provision Department

Chicago, September 12, 1921

FEDERAL TRADE COMMISSION
vs.
SWIFT & CO.

Docket No. 453	Exhibit No. 58
Respondent's Witness	Date 9/12/21
E A Fox	Reporter E J Vogel

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eferred

2529 RESPONDENT'S EXHIBIT No. 59.

"Current News, United States Department of Agriculture Bureau of Animal Industry July 1, 1920.

Filed as physical exhibit.

ion
ept. 24,

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Swift & Company, *Petitioner,*
against
Federal Trade Commission, *Respondent.*
} No. 3215 October Term, 1922.

STIPULATION.

It is hereby stipulated by and between the parties to the above-entitled cause by their respective attorneys that, in compliance with the order of the United States Circuit Court of Appeals for the 7th Circuit, October Term, A. D. 1922, the Federal Trade Commission shall certify as the record in the said cause the following named pleadings, papers, testimony and exhibits:

Volume I, containing the pleadings, motions, rulings, findings, and orders.

Volume II and III, containing testimony and abstracts of testimony.

Volume IV, containing exhibits and abstracts of exhibits, it being stipulated with the permission and by order of the court, that Commission's exhibits numbers 110, 133, 200, 201 and 202, and Swift & Company's exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34a, 34b, 34c, 35, 37, 48, 50 to 56, inclusive, and 59, be not printed as a part of the record in this case, but that the originals of these exhibits be filed physically with the court at least ten days before the case is heard to be used in the argument and in the decision in the case, and that Commission's exhibits numbers 199, 203-206, inclusive, and Swift & Company's exhibits numbers 38-42 and 43, be omitted from the record and not printed as a part of the record in

this case, and that the originals shall remain in the custody of the Federal Trade Commission.

That the record so certified shall constitute the record in this cause and shall be printed in its entirety and the case be heard upon the record so printed only, together with said physical exhibits which shall be filed with the court in accordance with this stipulation, unless the court shall direct the printing of the other parts; and that a copy of this stipulation shall be certified and be a part of the record in this case.

W. H. FULLER
W. H. Fuller, Counsel for respondent.
ALBERT H. AND HENRY VEEDER
JAMES M. SHEEAN
FRANK L. HORTON
Counsel for Petitioner.

Dated this 21st day of September, 1923.
Filed Sep 24 1923 Edward M. Holloway, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Affidavit Adrien Busick filed 1923.

For the Seventh Circuit.

Swift & Company, *Petitioner,*
against
Federal Trade Commission, *Respondent.*
No. 3215

AFFIDAVIT.

District of Columbia, ss:

Adrien F. Busick, being duly sworn, deposes and says that he is an attorney on the staff of the Federal Trade Commission, and of counsel for the respondent in this case which is brought to review an order of the Federal Trade Commission requiring the petitioner to cease and desist from certain alleged unfair methods of competition and to divest itself of capital stock acquired in certain corporations; that among the exhibits introduced on behalf of the Commission and Swift & Company at the hearings before the Federal Trade Commission were certain ledgers, cash books, bank books, check books, invoices, and other exhibits, designated as Commission's exhibits numbers 110, 133, 200, 201, 202, and Swift & Company's

exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34-A, 34-B, 34-C, 35, 37, 48, 50 to 56, inclusive, and 59; that these exhibits are quite bulky and their printing would unnecessarily increase the costs of the case; that it is deemed by the parties to the case unnecessary to include these exhibits in the printed record in this case and it is desired by counsel for both parties to obtain an order dispensing with the inclusion thereof and providing that the originals shall be filed physically with the court as exhibits at least ten days before the case is heard, to be used at the argument and in the decision in the case.

ADRIEN F. BUSICK
Adrien F. Busick, Attorney,
Federal Trade Commission,
Of Counsel for Respondent.

(Seal)

Subscribed and sworn to before me this 22 day of August, 1923.

F. C. BOGGARLY
Notary Public, District of
Columbia.

Filed Sep 24 1923. Edward M. Holloway, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed Sep 24 1923.

For the Seventh Circuit.

Swift & Company, *Petitioner,*
against
Federal Trade Commission, *Respondent.*
No. 3215

ORDER.

Upon the affidavit of Adrien F. Busick, sworn to the 22nd day of August, 1923, it is

Ordered, that the exhibits designated as Commission's Exhibits numbers 110, 133, 200, 201, 202, and Swift & Company's Exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34-A, 34-B, 34-C, 35, 37, 48, 50 to 56, inclusive, and 59, be filed with this court as physical exhibits at least ten days before the case is heard, to be used at the argument and in the decision in this case; and that the printing of said exhibits as a part of the record in this case be dispensed with.

BAKER, C. J.

Dated this 24th day of September, 1923.

Filed Sep 24 1923. Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 1591, inclusive, contain a true copy of the printed Petition for review of order of Federal Trade Commission and printed record (in two volumes) printed under my supervision on which the following entitled cause was heard:

Swift & Company

vs.

Federal Trade Commission

No. 3215, October Term, 1923, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-second day of September A. D. 1925.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the third day of October, 1922, of the October term in the year of our Lord one thousand nine hundred and twenty-two and of our Independence the one hundred and forty-seventh.

And afterwards, to wit: On the Twenty-fourth day of October, 1922, there was filed in the office of the clerk of this court a certain Petition to Review Order of Federal Trade Commission, which said Petition is not copied here as the same appears on pages one (1) to three (3) of the Printed Record in this cause, certified herewith.

And afterwards, on the same day, to wit: On the twenty-fourth day of October, 1922, an Order granting leave to file petition to review order of Federal Trade Commission was entered in this court, which said order is not copied here as the same appears on page three (3) of the Printed Record certified herewith.

And afterwards, on the same day, to wit: On the twenty-fourth day of October, 1922, came the petitioner by its counsel, Messrs. Albert H. and Henry Veeder, James M. Sheean and Frank L. Horton and filed in the office of the clerk of this court their appearances, which said appearances are in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 3215. October Term 1922.

Swift & Company,
Petitioner,

—*vs*—

Federal Trade Commission,
Respondent.

The clerk will enter my appearance as counsel for the Petitioner.

ALBERT H. AND HENRY VEEDER,
76 W. Monroe St.
JAMES M. SHEEAN,
105 South LaSalle St.
FRANK L. HORTON,
Union Stock Yards,
Tel. Yards 4200.

Endorsed: Filed Oct. 24, 1922. Edward M. Holloway, Clerk.

And afterwards, to wit: On the twenty-fourth day of September, 1923, there was filed in the office of the clerk of this court a certain Stipulation, which said stipulation is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Swift & Company,
Petitioner,
vs.
Federal Trade Commission,
Respondent.

No. 3215
October Term 1922.

STIPULATION.

It is hereby stipulated by and between the parties to the above entitled cause by their respective attorneys that, in compliance with the order of the United States Circuit Court of Appeals for the 7th Circuit, October Term A. D. 1922, the Federal Trade Commission shall certify as the record in the said cause the following named pleadings, papers, testimony and exhibits:

Volume 1, containing the pleadings, motions, rulings, findings and orders.

Volumes II and III, containing testimony and abstracts of testimony.

Volume IV, containing exhibits and abstracts of exhibits, it being stipulated with the permission and by order of the court, that Commissions exhibits numbers 110, 133, 200, 201, 202, and Swift & Company's exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34a 34b, 34c, 35, 37, 48, 50 to 56 inclusive, and 59, be not printed as a part of the record, in this case, but that the originals of these exhibits be filed physically with the court at least ten days before the case is heard, to be used in the argument and in the decision in the case and that Commissions exhibits numbers 199, 203, 206, inclusive and Swift & Company's exhibits numbers 38-42 and 43 be omitted from the record and not printed as a part of the record in this case, and that the originals shall remain in the custody of the Federal Trade Commission.

That the record so certified shall constitute the record in this cause and shall be printed in its entirety and the case be heard upon the record so printed only, together with said physical exhibits which shall be filed with the court in accordance with this stipulation unless the court shall direct the

printing of the other parts; and that a copy of this stipulation shall be cerified and be a part of the record in this case.

W. H. FULLER,
W. H. Fuller, Counsel for Respondent.
ALBERT H. AND HENRY VEEDER,
JAMES M. SHEEAN,
FRANK L. HORTON,
Counsel for Petitioner.

Dated this 21st day of September, 1923.

Endorsed: Filed Sept. 23, 1923. Edward M. Holloway, Clerk.

And on the same day, to wit: On the twenty-fourth day of September, 1923, there was filed in the office of the clerk of this court an Affidavit of Adrien F. Busick, which said Affidavit is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Swift & Company,
Petitioner,
No. 3215 *vs.*
Federal Trade Commission,
Respondent.

AFFIDAVIT.

District of Columbia, ss:

ADRIEN F. BUSICK, being duly sworn, deposes and says that he is an attorney on the staff of the Federal Trade Commission, and of counsel for the respondent in this case which is brought to review an order of the Federal Trade Commission requiring the petitioner to cease and desist from certain alleged unfair methods of competition and to divest itself of capital stock acquired in certain corporations; that among the exhibits introduced on behalf of the Commission and Swift & Company at the hearings before the Federal Trade

Commission were certain ledgers, cash books, bank books, check books, invoices and other exhibits designated as Commissions exhibits numbers 110, 133, 200, 201, 202 and Swift & Company's exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34-A, 34-B, 34-C, 35, 37, 48, 50 to 56 inclusive, and 59; that these exhibits are quite bulky and their printing would unnecessarily increase the costs of the case; that it is deemed by the parties to the case unnecessary to include these exhibits in the printed record in this case and it is desired by counsel for both parties to obtain an order dispensing with the inclusion thereof and providing that the originals shall be filed physically with the court as exhibits at least ten days before the case is heard, to be used at the argument and in the decision in the case.

ADRIEN F. BUSICK,
Adrien F. Busick, Attorney Federal Trade Commission Of Counsel for Respondent.

Subscribed and sworn to before me this 22 day of August, 1923.

F. C. BAGGARLY,
(Seal) *Notary Public, District of Columbia.*

Endorsed: Filed Sept. 24, 1923. Edward M. Holloway, Clerk.

And afterwards, on the same day, to wit: On the twenty-fourth day of September, 1923, the following further proceedings were had and entered of record, to wit:

Monday, September 24, 1923.

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.

Before:

Hon. Francis E. Baker, Presiding Judge.

Swift & Company
3215 —*vs*—
Federal Trade Commission.

Petition to Review Order of the Federal Trade Commission.

Upon the affidavit of Adrien F. Busick, sworn to the 22nd day of August, 1923, it is

Ordered that the exhibits designated as Commission's exhibits numbers 110, 133, 200, 201, 202, and Swift & Company's exhibits numbers 11, 12, 14, 15, 16, 31, 33, 34-A, 34-B, 34-C, 35, 37, 48, 50 to 56 inclusive and 59, be filed with this court as physical exhibits at least ten days before the case is heard, to be used at the argument and in the decision in this case; and that the printing of said exhibits as a part of the record in this case be dispensed with.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the second day of October, 1923, of the October term in the year of our Lord one thousand nine hundred and twenty-three and of our Independence the one hundred and forty-eighth.

And afterwards, to wit: On the fourteenth day of January, 1924, came the Respondent by its counsel Messrs. W. H. Fuller and Adrien F. Busick, and filed in the office of the clerk of this court their appearances, which said appearances are in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 3215. October Term, 1922.

Swift & Company,
Petitioner,

—vs—

Federal Trade Commission,
Respondent.

The clerk will enter my appearance as counsel for the Respondent.

W. H. FULLER,
ADRIEN F. BUSICK.

Endorsed: Filed January 14, 1924. Edward M. Holloway, Clerk.

And afterwards, to wit: On the twenty-ninth day of April, 1924, the following further proceedings were had and entered of record, to wit:

Tuesday, April 29, 1924.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

3215 Swift & Company —*vs*— Federal Trade Commission. } Petition to Review Order of the Federal Trade Commission.

It is now here ordered by the court that the reply brief for the petitioner in this cause be filed by May 15, 1924.

And afterwards, to wit: On the twenty-third day of May, 1924, the following further proceedings were had and entered of record, to wit:

Friday, May 23, 1924.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

Swift & Company
3215 —*vs*—
Federal Trade Commission.

Petition to Review Order of the Federal Trade Commission.

It is ordered by the court that leave be, and the same is hereby granted J. J. Hill to appear amicus curiae and to file a brief in this cause. It is further ordered that leave be, and the same is hereby granted the respondent herein to file a reply brief within twenty (20) days and that the petitioner have ten (10) days thereafter in which to reply.

Swift & Company
3215 —*vs*—
Federal Trade Commission.

Petition to Review Order of the Federal Trade Commission.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. James M. Sheean, counsel for petitioner, and by Mr. Adrien F. Busick and Mr. Ernest F. Haycraft, counsel for respondent, and by Mr. J. J. Hill, amicus curiae, and the court having heard the same takes this matter under advisement.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the seventh day of October, 1924, of the October Term in the year of our Lord one thousand nine hundred and twenty-four and of our Independence the one hundred and forty-ninth.

And afterwards, to wit: On the sixteenth day of February, 1925, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 3215. OCTOBER TERM, 1924, JANUARY SESSION, 1925.

Swift & Company,
Petitioner,
vs.
Federal Trade Commission,
Respondent.

February 16, 1925.

Before ALSCHULER, EVANS and PAGE, *Circuit Judges.*

EVANS, *Cir. J.:* Petitioner seeks to set aside an order of the Federal Trade Commission directing it to:

"(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and Cease and Desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

"(2) So divest itself of all the capital stock hereto-

fore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by any one for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

"(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent. * * *"

A record of inexcusable length discloses facts almost free from controversy.

Petitioner, in June, 1917, acquired all of the stock of the Moultrie Packing Company of Moultrie, Georgia, and in July, 1917, all of the capital stock of the Andalusia Packing Company, of Andalusia, Alabama. It immediately went into possession of both plants and managed and operated them.

The Moultrie Packing Company was organized in 1913 by local business men of Moultrie, Georgia, and its growth was rapid, its business prosperous, and its profits large and increasing.

The Andalusia Company of Andalusia, Alabama, was similarly organized in October, 1915, with a somewhat larger capitalization, and its brief history was one of growth and profit. Both packing companies slaughtered cattle and hogs. Their history is briefly written by the following table:

Moultrie Packing Company		1914	1915	1916	1917 (five months)
Pork	lbs.	200,598	2,199,441	7,305,506	3,907,909
Beef	"	24,739	442,221	196,333	252,280
Lard	"	20,320	326,580	1,171,875	827,575

In the five months of 1917, its profits exceeded sixty per cent. of its paid up capital.

Andalusia Packing Company		(part of year)	(five months)
Pork	lbs.	3,065,341	2,914,692
Beef	"	6,426	189,523
Lard	"	383,774	564,293

For the year ending May 1st, 1917, its profits were $62,646.80 or about fifty per cent. of its paid up capital.

Petitioner was in direct competition with these two packing companies, although the hogs slaughtered by the Moultrie and Andalusia companies were not corn fattened, and the pork was known as "soft." The two packing companies, however, furnished all of the competition which petitioner and the four other large Chicago packing houses met in southeastern United States. Though the total number of hogs and cattle slaughtered at these two packing houses was but a small fraction of one per cent. of that killed in the United States, the competition in fresh pork sales which they furnished in this territory was substantial and direct.

Section 7 of the so-called Clayton Act provides:

> "SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> "This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

The Commission found,—and no other finding could have been made,—that the purchaser was engaged in interstate commerce; that while so engaged it purchased all the stock of the Moultrie Packing Company and the stock of the Andalusia Packing Company, both of which companies were also engaged in interstate commerce; and that the effect of such acquisition was to substantially lessen competition between the corporation whose stock was acquired, and the corporation making the acquisition.

These findings would necessarily dispose of the application were it not for petitioner's insistent urge that the statute does not mean what it says, and that the court should read into it "the rule of reason" and insert additional requirements, viz: that the competition between the two companies prior to consolidation was substantial, and the effect of the acquisition was injurious to the public.

It further contends that said Section 7 is unconstitutional unless these essential facts are read into it.

The general object and purpose of this statute is so evident that it is hardly necessary to state it. It and the parent legislation, the Sherman law, sought to maintain a wholesome competition between those engaged in competitive interstate commerce. The agitation and discussion preceding their enactment are matters of history of which we must take judicial notice. In its title to this legislation, the Congress stated its purpose, thus:

> "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

It particularly referred to a previous act "to protect trade and commerce against unlawful restraints and monopolies."

The report of the Senate Judicial Committee confirms this conclusion.

> "Broadly stated, the bill, in its treatment of unlawful restraints and monopolies, seeks to prohibit and make unlawful certain trade practices which, as a rule, singly and in themselves, are not covered by the act of July 2, 1890, or other existing antitrust acts, and thus by making these practices illegal, to arrest the creation of trusts, conspiracies, and monopolies in their incipiency and before consummation."

The Clayton Act,

> "Was intended to supplement the Sherman Act and within its limited sphere established its own rule." *United Shoe Mach. Co.* v. *United States*, 258 U. S. 451.

As was stated in *Standard Co.* v. *Margrane-Houston Co.*, 258 U. S. 346:

> "The Clayton Act sought to reach the agreements embraced within its sphere in their incipiency, and in the section under consideration to determine their legality by specific tests of its own." * * *

The statute does not prohibit all acquisitive contracts. It is only when such acquisition produces "the effect" described that the statute condemns. It is worthy of note that such effect may be either to,—(a) substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition; (b) restrain such commerce in any section or community; or (c) tend to create a monopoly of any line of commerce. (a) can not be construed without considering (b) and (c). If the court were to read into (a) the elements which petitioner has asked us to insert, what would become of the requirements of (b) and (c)?

Nor are we, in construing this legislation, called upon to pass judgment respecting its wisdom. Conceding that the Congress was authorized under the commerce clause and other sections of, or amendments to, the Constitution, to deal with the subject matter, it alone could determine the wisdom of such legislation and make such exceptions or reservations as it deemed the needs of commerce, and the welfare of the public, required.

We are, therefore, confronted with a simple legal question, one of statutory construction. We must divorce it from the associated economic questions.

The canons of statutory construction call for an expression of legislative intention, and at the same time effectuate the thought conveyed by plain and unambiguous language.

In the present case there is, fortunately, not the slightest conflict between the obvious intention of Congress and the language chosen to convey the thought. Under such circumstances to search for avenues of escape, to conjure up hardships that might possibly result from the enforcement of such legislation, or even to anticipate and avoid constitutional objections, is not a proper judicial function.

It is also urged by petitioner that had it first purchased the assets of these two packing companies rather than the stock, the transaction would have avoided the condemnation of the statute. With this assumption as the major premise of its syllogism, it contends that the transaction was, in fact, the acquisition of the assets of the Moultrie and Andalusia companies.

We are not prepared to, nor called upon to express an opinion respecting the legality of a purchaser's acquisition of the assets of competitors engaged in commerce. The facts in this case do not make it necessary for us to even discuss the question. Petitioner bought the stock. After it acquired the stock, it made its servants and employees, officers and directors of these companies. It took over the active management, and conducted the business so that existing competition was eliminated.

If petitioner's major premise be accepted, then the distinction between acquiring the stock and purchasing the assets can not be ignored when the evidence is examined to ascertain whether petitioner purchased stock or assets.

CONSTITUTIONALITY. It is first urged that the distinction made between corporations and individuals is arbitrary.

But was there not a basis for the classification? Congress was dealing with business consolidations of large size. It was endeavoring to prevent the creation of trusts and monopolies. Corporations are the instrumentalities commonly used by those engaged in large enterprises. They lend themselves handily to activities of large proportions. Their control can be readily acquired. Hence the classification has some basis for its existence.

Does the legislation violate any of petitioner's right of "life, liberty or property without due process of law"? This is, in view of our construction of the statute, the real question in the case.

Recognizing, as we do, that the prohibition relates only to those contracts the effects of which is to lessen competition between competing corporations engaged in commerce, we are confronted with the narrow question of petitioner's right (as against the public) to make contracts for the acquisition of a competitor's capital stock, the necessary effect of which is to lessen, or to eliminate entirely, competition from this source.

Courts are constantly called upon to consider deprivation of "liberty" or "property," in the light of changing economic conditions, due to the increase and congestion of population, as well as to changes in methods of business. "Due process," "liberty of contract," and "property rights" are somewhat relative terms, incapable of accurate, precise and lasting definition. In fact, changes in our living, in methods of business, and in the ever increasing functions of government, must be recognized in construing decisions rendered at widely

varying periods of our national history. Legislation which under certain conditions may be found to be an arbitrary and capricious interference with the individual's right to "right, liberty or property," at a later period in the light of experience and changed conditions, may be upheld.

If, as petitioner's counsel concedes, the section is free from "constitutional objection," if "the powers and activities of its ministerial agency" (the Federal Trade Commission) are properly "circumscribed," the query arises, to what circle should such powers be confined?

We are still dealing with words of general meaning and make no progress. Must Congress act only when the child has grown to the stature of a giant? If authority exists to curb,—or to dissolve,—a corporation when it has reached the trust stage, may Congress not take steps to arrest the corporation's growth before the final stage has been reached? Is our national defense policy based upon an impending conflict, or a desire to prevent one? In order to build the Panama Canal, the mosquito was eliminated before the yellow fever appeared. The government may, under the Commerce Clause of the Constitution, forbid every contract "which is reasonably calculated to injuriously affect the public interest." *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 202. It may act to anticipate or prevent an unfortunate situation as well as deal with one that existed.

As before stated, the Clayton Act supplemented the Sherman law, the practical enforcement of which was found difficult and often resulted in hardships to innocent parties. The section under consideration sought by means, which the Congress deemed expedient and effective, to prevent a condition which the Sherman law was designed to overcome when once it existed. Certainly courts should hesitate to say that the means selected are not "appropriate" or "primarily adapted" to accomplish the desired end when it is conceded that the prevention of such "ends" through dissolution is within the recognized powers of Congress.

In other words, the issue is not one of authority of Congress to deal with an undesirable condition, but rather an asserted want of power to prevent that result through the means resorted to for that purpose. And the answer seems to be that Congress, having the authority to regulate interstate commerce, may do so by such means as to it seems appropriate, to prevent a condition which is contrary to the settled public policy of the government and inimical to the welfare of its people.

If competing corporations may not consolidate, it naturally follows that it will be difficult for one corporation ever to monopolize an industry. So it may be said that the "means" are "appropriate," and "primarily adapted" to accomplish the end. Whether such "means" may not, when strictly enforced, lead to "evils" greater than the "cure" is another question,—one which the Congress only may determine.

It was also urged that Paragraph 3 modified the first paragraph of Section 7, and thus amended, aids the petitioner.

It may well be that the third paragraph of Section 7 modifies the first and limits it, but we find in the evidence nothing to support a finding that petitioner acquired the stock of its compeitors

> "*solely* for investment and not using the same, by voting or otherwise, to bring about or attempting to bring about the substantial lessening of competition."

It would be difficult to conceive of any case where one corporation purchased all of the stock of its competitor *solely* for investment. Such a case would be a rare one. Certainly petitioner herein did not purchase this stock solely for investment.

In conclusion it might be suggested to respondent that delay in instituting proceedings of the character hereunder review, frequently works an unnecessary hardship to the aggrieved party. Certainly a limitation of time should be fixed, by statutory enactment or otherwise, during which these proceedings must be instituted. The purchasing company would not then (as appears was done in the case before us) invest vast sums of money enlarging and improving the acquired property before respondent took steps to restore the status of the companies.

The petition is denied.

ALSCHULER, *Cir. J.* The apparent considerable benefit to the localities from the increased manufacturing activities there, which followed the transactions complained of, illustrates the possible hardship and resultant embarrassment in strictly applying the statute in accordance with its plain and comprehensive terms. But the very defense here made would tend to show the same local benefit would have accrued had the stock purchases in question not occurred. In large measure the acquirement of the stock is sought to be justified by contention and proof that petitioner would in any event have established plants of its own there or thereabout. Had this been done the localities would have had not only new plants

of this large and well established concern, but the existing plants as well. But it is strongly urged that the ones already there would not likely have withstood the added competition, and that in any event they would not long have survived. Be this as it may, this cannot suspend or avoid the very broad and sweeping statute which denounces acquisition by one corporation of the stock of another, or of the stock of two or more other corporations, where this may substantially lessen competition between them, or restrain commerce in any section or community, or tend to create monopoly in any line of commerce. If an exception to the operation of the statute ought and is to be raised in cases where the concern whose stock is acquired is comparatively small, or weak, or for any reason unlikely long to endure, it must come through statutory enactment, and not by judicial construction.

And afterwards, on the same day, to wit: On the sixteenth day of February, 1925, the following further proceedings were had and entered of record, to wit:

Monday, February 16, 1925.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.

3215 Swift & Company —*vs*— Federal Trade Commission. } Petition to review an order of the Federal Trade Commission.

This cause came on to be heard on the petition to review an order of the Federal Trade Commission, entered August 3, 1922, and the transcript of record, and was argued by counsel.

On consideration whereof: It is now ordered, adjudged and decreed by this court that the said petition to review said order of the Federal Trade Commission be, and the same is hereby denied.

And afterwards, to wit: On the sixteenth day of March, 1925, there was filed in the office of the clerk of this court a certain petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to wit: On the twenty-eighth day of March, 1925, the following further proceedings were had and entered of record, to wit:

Saturday, March 28, 1925.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.

Swift & Company
3215 —*vs*—
Federal Trade Commission.

Petition to review an order of the Federal Trade Commission.

Upon the filing of a stipulation of counsel, it is ordered by the court that the time for respondent to file its answer to the petition for a rehearing in this cause be, and the same is hereby extended to and including April 27, 1925.

And afterwards, to wit: On the twentieth day of April, 1925, there was filed by respondent in the office of the clerk of this court a certain Answer to Petition for a Rehearing, which said Answer is not copied here.

Tuesday, October 13, 1925.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page.

	Swift & Company	Petition to Review an order of the Federal Trade Commission.
3215	*vs.*	
	Federal Trade Commission	

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1593 to 1613, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel, petition for rehearing and answer thereto) in the case of

Swift and Company

vs.

Federal Trade Commission

No. 3215, October Term, 1923, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventeenth day of October, A. D. 1925.

EDWARD M. HOLLOWAY,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 23, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that a duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES.

Nos. 96, 213, 231.—October Term, 1926.

Federal Trade Commission, Petitioner, 96 *vs.* Western Meat Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.
Thatcher Manufacturing Company, Petitioner, 213 *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
Swift & Company, Petitioner, 231 *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 23, 1926.]

Mr. Justice McReynolds delivered the opinion of the Court.

I

These causes necessitate consideration of the power of the Federal Trade Commission where it finds that one corporation has acquired shares of a competitor contrary to the inhibition of the Clayton Act, approved October 15, 1914, c. 323, 38 Stat. 730, 731. That Act provides—

> Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two

or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. . . .

Section 8 forbids interlocking directors.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint . . . If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person ["person" includes corporation] an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. . . .

Section 5 of the Act to Create a Federal Trade Commission, approved September 26, 1914, c. 311, 38 Stat. 717, 719, declares unfair methods of competition in commerce unlawful, prescribes the procedure to be followed, and gives the Commission power to require an offending party to cease and desist from such methods. This section is not presently important; the challenged orders sought to enforce obedience to § 7 of the Clayton Act.

II

No. 96. The Western Meat Company, a California corporation, and the Nevada Packing Company, of Nevada, were interstate competitors engaged in manufacturing, selling and distributing meat products. December 30, 1916, the former purchased all stock of the latter and has continued to hold it. In a proceeding begun November 24, 1919, the Commission found such purchase and continued ownership contrary to law and entered an order directing—

> That the respondent, Western Meat Company, shall forthwith cease and desist from violating the provisions of Section 5 of said Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of said Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the Nevada Packing Company as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to neither directly or indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation.
>
> That in such divestment, no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its officers, directors or stockholders or the officers, directors or stockholders of any of respondent's subsidiaries or affiliated companies.

The court below held this order went beyond the Commission's authority and directed that it be modified by eliminating "the injunction against the acquisition by the petitioner of the plant and property of the Nevada Packing Company."

Respondent maintains that the Commission's authority is strictly limited by the statute and that where there has been an unlawful purchase of stock it can do no more than enter "an order requiring

such person to cease and desist from such violations and divest itself of the stock held." Also, that the Commission has no power to prevent or annul the purchase of a competitor's plant and business, as distinguished from stock therein. *Wilder Manufacturing Co.* v. *Corn Products Refining Co.*, 236 U. S. 165, 174; *Federal Trade Commission* v. *Beech-nut Packing Co.*, 257 U. S. 441, 453; *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463, 475, are relied upon.

Without doubt the Commission may not go beyond the words of the statute properly construed, but they must be read in the light of its general purpose and applied with a view to effectuate such purpose. Preservation of established competition was the great end which the legislature sought to secure.

The order here questioned was entered when respondent actually held and owned the stock contrary to law. The Commission's duty was to prevent the continuance of this unlawful action by an order directing that it cease and desist therefrom and divest itself of what it had no right to hold. Further violations of the Act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent.

Although the respondent held all the capital stock, the plant and other property of the Nevada Packing Company had not been acquired. The Commission directed that it so divest itself of all this stock as to include in such divestment the Packing Company's plant and property necessary to the operation thereof, etc. Taken literally, this goes beyond the situation revealed by the record, but the order must be construed with regard to the existing circumstances. Divestment of the stock must be actual and complete and may not be effected, as counsel for respondent admitted was intended, by using the control resulting therefrom to secure title to the possessions of the Packing Company and then to dissolve it. Properly understood, the order was within the Commission's authority, and the court below erred in directing the elimina-

tion therefrom of the above-quoted words. Its decree must be modified accordingly and then affirmed.

III

Number 213. The Commission entered complaint against the petitioner March 1, 1921, and charged that the latter, contrary to § 7 of the Clayton Act, first acquired the stock of four competing corporations—Lockport Glass Company, Essex Glass Company, Travis Glass Company and Woodbury Glass Company—and thereafter took transfers of all the business and assets of the first three and caused their dissolution, October 20, 1920, December 18, 1920, and January 13, 1921, respectively. Having found the facts concerning a rather complicated series of transactions, the Commission ruled that the acquisitions of all these stocks were unlawful and ordered the petitioner to cease and desist from ownership, operation, management and control of the assets, properties, rights, etc., of the Lockport, Essex and Travis Glass companies secured through such stock ownership, and to divest itself of the assets, properties, rights, etc., formerly held by them. Also, that it should divest itself of the stock of the Woodbury Glass Company.

The court below held that the last-named company was not in competition with petitioner within the meaning of the statute and modified the order accordingly. Therein we agree and to that extent affirm its decree.

The court further ruled, in effect, that as the stocks of the remaining three companies were unlawfully obtained and ownership of the assets came through them, the Commission properly ordered the holder so to dispossess itself of the properties as to restore prior lawful conditions. With this we cannot agree. When the Commission institutes a proceeding based upon the holding of stock contrary to § 7 of the Clayton Act, its power is limited by § 11 to an order requiring the guilty person to cease and desist from such violation, effectually to divest itself of the stock, and to make no further use of it. The Act has no application to ownership of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. The purpose of the Act was to prevent continued holding of stock and the peculiar evils incident thereto. If purchase of property has produced an unlawful status a remedy is provided through the courts. Sherman Act, c. 647, 26 Stat, 209;

Act to Create a Federal Trade Commission, c. 311, § 11, 38 Stat. 717, 724; Clayton Act, c. 323, §§ 4, 15, 16, 38 Stat. 730, 731, 736, 737; *United States* v. *American Tobacco Co.*, 221 U. S. 106. The Commission is without authority under such circumstances.

IV

No. 231. A complaint against petitioner, filed November 24, 1919, charged that in 1917 and 1918 it had unlawfully obtained stock in two competing companies—Moultrie Packing Company and Andalusia Packing Company—and thereafter through the use of this obtained title to their business and physical property. The findings support the charge. The Commission ordered—

> That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:
>
> (1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and cease and desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employes and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall
>
> (2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by any one for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employe or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

The court below denied a petition for review and the matter is here by certiorari. As all property and business of the two competing companies were acquired by the petitioner prior to the filing of the complaint, it is evident that no practical relief could be obtained through an order merely directing petitioner to divest itself of valueless stock. As stated in number 213, we are of opinion that under §§ 7 and 11 of the Clayton Act the Commission is without authority to require one who has secured actual title and possession of physical property before proceedings were begun against it to dispose of the same, although secured through an unlawful purchase of stock. The courts must administer whatever remedy there may be in such situation. The order of the Commission should have been reviewed and set aside; and judgment to that effect will be entered here.

A true copy.

Test:

Clerk, Supreme Court, U. S.

Mr. Justice BRANDEIS, dissenting in part.

In my opinion, the purpose of § 7 of the Clayton Act was not, as stated by the Court, merely "to prevent continued holding of the stock and the peculiar evils incident thereto." It was also to prevent the peculiar evils resulting therefrom. The institution of a proceeding before the Commission under § 7 does not operate, like an injunction, to restrain a company from acquiring the assets of the controlled corporation by means of the stock held in viola-

tion of that section. If, in spite of the commencement of such a proceeding, the company took a transfer of the assets, the Commission could, I assume, require a retransfer of the assets, so as to render effective the order of divestiture of the stock. I see no reason why it should not, likewise, do this although the company succeeded in securing the assets of the controlled corporation before the Commission instituted a proceeding. Support for this conclusion may be found in § 11, which provides for action by the Commission whenever it "shall have reason to believe that any person is violating *or has violated* any of the provisions" of the earlier sections. (Italics ours.)

I think that the decrees in Nos. 213 and 231 should be affirmed.

The Chief Justice, Mr. Justice HOLMES and Mr. Justice STONE join in this dissent.